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Contents

Federal Register

Vol. 89, No. 176

Wednesday, September 11, 2024

Agriculture Department

See Animal and Plant Health Inspection Service

See Food Safety and Inspection Service

Animal and Plant Health Inspection Service

NOTICES

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

Self-Certification Medical Statement, 73621–73622

Census Bureau

NOTICES

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

Generic Clearance for 2030 Census Small-Scale Tests, Evaluations, and Database Updates, 73623–73624

Centers for Medicare & Medicaid Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 73655–73656

Children and Families Administration

NOTICES

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

Children's Bureau Regional Partnership Grants Final Report Outline, 73656

Commerce Department

See Census Bureau

See Foreign-Trade Zones Board

See Industry and Security Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission

NOTICES

Meetings; Sunshine Act, 73636

Education Department

NOTICES

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

Carl D. Perkins Career and Technical Education Act State Plan Guide, 73639

Consolidated Annual Report for the Carl D. Perkins Career and Technical Education Act, 73638–73639

Expanding Opportunity Through Quality Charter Schools Program: Technical Assistance To Support Monitoring, Evaluation, Data Collection, and Dissemination of Best Practices, 73637–73638

Regional Educational Laboratory Midwest: Teacher Preparation Program Completion: What Factors Play a Role, 73637

Election Assistance Commission

NOTICES

Meetings; Sunshine Act, 73639–73640

Employment and Training Administration

NOTICES

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

H–2A Temporary Agricultural Labor Certification

Program and Agricultural Recruitment System, 73725

Energy Department

See Federal Energy Regulatory Commission

NOTICES

Privacy Act; Systems of Records, 73640–73643

Environmental Protection Agency

RULES

Air Quality State Implementation Plans; Approvals and Promulgations:

California; South Coast Air Quality Management District, 73568–73588

Phasedown of Hydrofluorocarbons:

Address Vacated Provisions, 73588–73592

State Hazardous Waste Management Program:

North Carolina; Final Authorization of Revisions; Withdrawal, 73592

PROPOSED RULES

Outer Continental Shelf Air Regulation:

Massachusetts; State Requirements Incorporated, 73617–73620

Equal Employment Opportunity Commission

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 73649–73651

Federal Aviation Administration

PROPOSED RULES

Airworthiness Directives:

Airbus SAS Airplanes, 73608–73612

Special Conditions:

Aerocon Engineering Company, Airbus Model A350–941

Airplane; Forward Lower Lobe Crew Rest

Compartment Installation, 73604–73608

Federal Communications Commission

RULES

Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, 73601–73602

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 73652–73654

Federal Advisory Committee Act:

Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States, 73651

Hearings, Meetings, Proceedings, etc.:

Communications Security, Reliability, and Interoperability Council, 73652–73653

Privacy Act; Systems of Records, 73651

Federal Emergency Management Agency**NOTICES**

Disaster or Emergency Declaration and Related

Determination:

Amendment No. 13, 73685–73686
 Chickasaw Nation, 73693–73694
 Florida, 73671, 73694
 Florida; Amendment No. 1, 73697
 Florida; Amendment No. 2, 73686
 Georgia, 73692–73693
 Georgia; Amendment No. 1, 73698
 Iowa; Amendment No. 6, 73695–73696
 Iowa; Amendment No. 7, 73669–73670
 Iowa; Amendment No. 8, 73694
 Iowa; Amendment No. 9, 73677
 Kansas, 73670
 Kentucky, 73672–73673, 73678
 Kentucky; Amendment No. 1, 73673, 73677
 Kentucky; Amendment No. 15, 73682–73683
 Kentucky; Amendment No. 2, 73689
 Kentucky; Amendment No. 3, 73684, 73688
 Minnesota; Amendment No. 3, 73684–73685
 Minnesota; Amendment No. 4, 73686
 Missouri, 73683
 Montana, 73689
 New Hampshire; Amendment No. 1, 73677, 73699
 New Hampshire; Amendment No. 2, 73696–73699
 New Mexico; Amendment No. 4, 73678
 New Mexico; Amendment No. 5, 73697–73698
 New Mexico; Amendment No. 6, 73686
 North Carolina, 73683–73684
 North Carolina; Amendment No. 1, 73699
 North Carolina; Amendment No. 2, 73683
 North Carolina; Amendment No. 3, 73687
 Puerto Rico, 73685, 73698
 Puerto Rico; Amendment No. 1, 73695
 South Carolina, 73691
 South Dakota, 73695
 Texas; Amendment No. 17, 73670
 Texas; Amendment No. 3, 73688
 Texas; Amendment No. 4, 73687
 Vermont, 73692
 Vermont; Amendment No. 1, 73688, 73691–73692
 Virgin Islands, 73696
 Virgin Islands; Amendment No. 1, 73687
 Virgin Islands; Amendment No. 2, 73693
 West Virginia; Amendment No. 2, 73697
 Flood Hazard Determinations, 73671–73682, 73689–73691

Federal Energy Regulatory Commission**NOTICES**

Application:

Pacific Gas and Electric Co., 73643–73644
 Combined Filings, 73646, 73649
 Environmental Assessments; Availability, etc.:
 Ampersand Christine Falls Hydro, LLC, 73647
 Appalachian Power Co., 73648
 Environmental Review:
 MS Hub Capacity Expansion Project, Mississippi Hub, LLC, 73645–73646
 Licenses; Exemptions, Applications, Amendments, etc.:
 South Sutter Water District, 73644–73645
 Request Under Blanket Authorization:
 Columbia Gas Transmission, LLC, 73647–73648
 Technical Conference:
 Energy Efficiency Resource Participation in Regional Transmission Organizations/Independent System Operators Markets, 73648–73649

Water Quality Certification Application:

Consolidated Hydro New York, LLC, 73643

Federal Financial Institutions Examination Council**NOTICES**

Hearings, Meetings, Proceedings, etc.:

Appraisal Subcommittee, 73654
 Appraisal Subcommittee; Cancellation, 73654

Federal Motor Carrier Safety Administration**NOTICES**

Exemption Application:

Commercial Driver's License; Hawaii Department of Transportation, 73744–73745

Review of Guidance, 73746

Food and Drug Administration**RULES**

Medical Devices:

Immunology and Microbiology Devices; Classification of the Whole Exome Sequencing Constituent Device, 73565–73568

NOTICES

Approval of Product Under Voucher:

Rare Pediatric Disease Priority Review Voucher; Opzelura (ruxolitinib), 73661–73662

Patent Extension Regulatory Review Period:

Technegas, 73660–73661
 Voquezna Dual Pak, 73658–73660
 Voquezna Triple Pak, 73656–73658
 Ztalmy, 73662–73663

Food Safety and Inspection Service**NOTICES**

Agency Information Collection Activities; Proposals,

Submissions, and Approvals:
 Accredited Laboratories, 73622–73623

Foreign-Trade Zones Board**NOTICES**

Authorization of Production Activity:

Mercury Marine (Electric Inboard and Outboard Motors), Foreign-Trade Zone 41, Fond Du Lac, WI, 73625
 Space Exploration Technologies Corp. (Internet Satellite Dish Kits), Foreign-Trade Zone 50, Hawthorne, CA, 73624

General Services Administration**NOTICES**

Record of Decision:

Buildings at 202, 214 and 220 South State Street, Chicago, IL, 73654–73655

Health and Human Services Department

See Centers for Medicare & Medicaid Services

See Children and Families Administration

See Food and Drug Administration

See Health Resources and Services Administration

See National Institutes of Health

See Substance Abuse and Mental Health Services Administration

RULES

World Trade Center Health Program:

Expanded Eligibility for Pentagon and Shanksville, PA Responders, 73592–73601

Health Resources and Services Administration**NOTICES**

Supplemental Award:

Autism Longitudinal Data Project, 73664–73665

Supplemental Funding:

Rural Behavioral Health Workforce Centers; Northern Border Region, 73663–73664

Homeland Security Department

See Federal Emergency Management Agency

See Transportation Security Administration

See U.S. Citizenship and Immigration Services

NOTICES

Hearings, Meetings, Proceedings, etc.:

Technical Mapping Advisory Council, 73699–73700

Housing and Urban Development Department**NOTICES**

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

Record of Employee Interview, 73705–73706

Request for Comment:

Modifying HUD's Elevated Blood Lead Level Threshold for Children Under Age 6 Who Are Living in Certain HUD-Assisted Target Housing Covered by the Lead Safe Housing Rule, 73702–73705

Industry and Security Bureau**PROPOSED RULES**

Reporting Requirements for the Development of Advanced Artificial Intelligence Models and Computing Clusters, 73612–73617

Inter-American Foundation**NOTICES**

Privacy Act; Systems of Records, 73706–73719

Internal Revenue Service**RULES**

Income Taxes; CFR Correction, 73568

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 73752–73761

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

Tax-Exempt Organization Forms, 73746–73752

Quarterly Publication of Individuals Who Have Chosen To Expatriate:

Correction, 73746

International Trade Administration**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea, 73626–73627

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea, 73625–73626

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China, 73628–73631

Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China, 73632

Laminated Woven Sacks From the Socialist Republic of Vietnam, 73627–73628, 73633–73634

Decision on Application for Duty-Free Entry of Scientific Instruments:

Massachusetts Institute of Technology et al., 73632–73633

International Trade Commission**NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:

Corrosion-Resistant Steel Products From Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam, 73721–73723

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

Certain Semiconductor Devices, and Methods of Manufacturing Same and Products Containing the Same, 73719–73721

Plastic Decorative Ribbon From China, 73719

Utility Scale Wind Towers From China and Vietnam, 73723

Justice Department**NOTICES**

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

Annual Certification Report and Equitable Sharing Agreement, 73723–73724

Authorization To Release Consumer/Credit Information, 73724–73725

Labor Department

See Employment and Training Administration

See Occupational Safety and Health Administration

NOTICES

Requests for Nominations:

Federal Advisory Council on Occupational Safety and Health, 73726–73727

National Aeronautics and Space Administration**NOTICES**

Hearings, Meetings, Proceedings, etc.:

Advisory Council, 73728–73729

National Institutes of Health**NOTICES**

Hearings, Meetings, Proceedings, etc.:

National Eye Institute, 73665

National Institute of Arthritis and Musculoskeletal and Skin Diseases, 73665

National Oceanic and Atmospheric Administration**RULES**

Pacific Halibut Fisheries of the West Coast:

Inseason Action for the 2024 Area 2A Pacific Halibut

Directed Commercial Fishery, 73602–73603

NOTICES

Adjustment of Fees for Seafood Inspection Services, 73635

Hearings, Meetings, Proceedings, etc.:

North Pacific Fishery Management Council, 73636

Ocean Exploration Advisory Board, 73634–73635

National Science Foundation**NOTICES**

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

Research Experience and Mentoring Survey, 73729–73730

Occupational Safety and Health Administration**NOTICES**

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

Occupational Safety and Health On-Site Consultation Agreements, 73727–73728

Personnel Management Office**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Questionnaire for Non-Sensitive Positions, 73730–73731
Performance Review Board Members, 73730

Postal Regulatory Commission**NOTICES**

Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, 73732–73734
New Postal Products, 73731–73732

Presidential Documents**PROCLAMATIONS**

Special Observances:
National Grandparents Day (Proc. 10805), 73557–73558
National Hispanic-Serving Institutions Week (Proc. 10804), 73555–73556

EXECUTIVE ORDERS

Federal Government:
Workforce Development; Investing in America and in American Workers (EO 14126), 73559–73564

ADMINISTRATIVE ORDERS

Terrorist Attacks; Continuation of National Emergency (Notice of September 9, 2024), 74099–74101
U.S. Elections, Foreign Interference or Undermining Public Confidence; Continuation of National Emergency (Notice of September 9, 2024), 74103–74104

Securities and Exchange Commission**RULES**

Guidance:
Form N–PORT and Form N–CEN Reporting; Open-End Fund Liquidity Risk Management Programs, 73764–73800

NOTICES

Application:
Great Elm Capital Corp., et al., 73739
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BYX Exchange, Inc., 73902–73948
Cboe BZX Exchange, Inc., 73852–73899
Cboe Exchange, Inc., 73802–73849
ICE Clear Credit LLC, 73734–73739
Investors Exchange LLC, 74000–74047
MIAX PEARL LLC, 73950–73997
Nasdaq BX, Inc., 74050–74097

Small Business Administration**NOTICES**

Disaster Declaration:
Minnesota; Public Assistance Only, 73739–73740

State Department**NOTICES**

Determination:
Foreign Missions Act, 73740–73741

Substance Abuse and Mental Health Services Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 73665–73669

Surface Transportation Board**NOTICES**

Exemption:
Acquisition of Control; Student Transportation of America, Inc. et al., West Point Tours, Inc., 73741–73742
Release of Waybill Data, 73742

Susquehanna River Basin Commission**NOTICES**

Grandfathering Registration, 73743
Minor Modification of Approved Projects, 73742
Projects Approved for Consumptive Uses of Water, 73743–73744

Transportation Department

See Federal Aviation Administration

See Federal Motor Carrier Safety Administration

Transportation Security Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Crew Member Self-Defense Training—Registration and Evaluation, 73700–73701

Treasury Department

See Internal Revenue Service

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

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Biographic Information (for Deferred Action), 73701–73702

Separate Parts In This Issue**Part II**

Securities and Exchange Commission, 73764–73800

Part III

Securities and Exchange Commission, 73802–73849

Part IV

Securities and Exchange Commission, 73852–73899

Part V

Securities and Exchange Commission, 73902–73948

Part VI

Securities and Exchange Commission, 73950–73997

Part VII

Securities and Exchange Commission, 74000–74047

Part VIII

Securities and Exchange Commission, 74050–74097

Part IX

Presidential Documents, 74099–74101, 74103–74104

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.

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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	
Proclamations:	
10804.....	73555
10805.....	73557
Executive Orders:	
14126.....	73559
Administrative Orders:	
Notices:	
Notice of September 9,	
2024	74101
Notice of September 9,	
2024	74103
14 CFR	
Proposed Rules:	
25	73604
39	73608
15 CFR	
Proposed Rules:	
702	73612
17 CFR	
270	73764
274	73764
21 CFR	
866	73565
26 CFR	
1	73568
40 CFR	
52	73568
84	73588
271	73592
Proposed Rules:	
55	73617
42 CFR	
88	73592
47 CFR	
63	73601
50 CFR	
300	73602

Presidential Documents

Title 3—

Proclamation 10804 of September 6, 2024

The President

National Hispanic-Serving Institutions Week, 2024

By the President of the United States of America

A Proclamation

Education is a ticket to a better life, and for more than 4.7 million Hispanic and Latino students, Hispanic-Serving Institutions (HSIs) make it possible. The over 500 HSIs across our country are home to over half of Hispanic and Latino college students. During National Hispanic-Serving Institutions Week, we celebrate these critical postsecondary institutions, which empower our students to pursue the full limits of their talent and ambition.

HSIs are engines of opportunity, success, and upward mobility. They serve Dreamers, first-generation college students, and many who come from low-income and underserved communities. HSIs empower their students, no matter the students' backgrounds, to obtain their degrees and begin building a more secure, prosperous future for themselves and their families.

My Administration is committed to giving HSIs the resources they need to support the students they serve. That is why we invested over \$15 billion in HSIs, including \$11 billion through the American Rescue Plan—the largest investment in Hispanic and Latino college students in our Nation's history. I also established the first-ever White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity through Hispanic-Serving Institutions, which will support HSIs in building their capacity to provide a high-quality education, identify opportunities for these institutions to participate in Federal programs, and help to ensure HSIs can continue to be engines of educational opportunity and economic mobility.

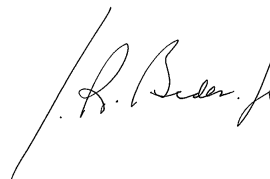
We are also working to make college more affordable for every American and to relieve the crushing burden of student loan debt. We have approved the cancellation of nearly \$170 billion in student loan debt for nearly 5 million people through various actions. We repaired the Public Service Loan Forgiveness Program (PSLF), giving more breathing room to teachers, nurses, law enforcement officials, first responders, and other public servants. My Administration has already provided relief to 946,000 borrowers through PSLF—before I took office, only 7,000 public servants had received debt relief through this program. We secured a \$900 increase to the maximum Pell Grant award—the largest increase in over a decade—lowering the cost of higher education for underserved students. We are also taking steps to help borrowers manage their payments through income-driven repayment and get access to benefits through fixes to public service loan forgiveness, borrower defense, and other key types of discharges. And earlier this year, I laid out my Administration's new plans that would provide debt relief for more than 30 million Americans when combined with everything we have done so far.

The promise of America is big enough for everyone to succeed—we just have to make sure we keep the doors of opportunity open. This week, may we celebrate the more than 500 HSIs, which support our Latino students, put new possibilities within their reach, and give them a fair shot at the American Dream.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 9 through

September 15, 2024, as National Hispanic-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the many ways these institutions and their graduates contribute to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of September, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that extends from the bottom left towards the top right.

Presidential Documents

Proclamation 10805 of September 6, 2024

National Grandparents Day, 2024

By the President of the United States of America

A Proclamation

For so many Americans, grandparents are the first people they look to for comfort, love, and guidance. Grandparents carry family wisdom, share their stories, and are the core of their families. On National Grandparents Day, we give thanks to grandparents and recognize their continuing contributions to our Nation.

Throughout my life, I have carried the values my grandparents instilled in me—but, above all, I have carried in my heart their memories and unconditional love. Like grandparents across the country, they taught me to be resilient no matter what life may hand you, to take care of everyone, and to leave no one behind. Now that the First Lady and I are grandparents, we work to do the same. Our grandchildren are blessings—they are the love of our lives and the life of our love.

Across the country, grandparents are not only providing their guidance, but they are also stepping up when their families need them most, especially to care for grandchildren. They help out with everyday tasks for their grandkids—whether it is driving them to school, packing lunches, or baby-sitting. Over 2.7 million grandparents are primary caregivers, creating a stable and warm home so that their grandkids can thrive. And with hearts that always have more to give, they offer advice and keep family traditions alive.

Just as our grandparents have always taken care of us, my Administration is working to take care of them. That work begins by ensuring they have access to the health care they need. I signed the Inflation Reduction Act to lower costs of medications by giving Medicare the power to negotiate lower prescription drug prices. The Inflation Reduction Act also capped the cost of insulin for people on Medicare at \$35 per month, lowering it from as much as \$400 per month. In line with our efforts to control costs, beginning in 2025, out-of-pocket prescription drug costs for seniors and people with disabilities on Medicare will be capped at \$2,000 per year.

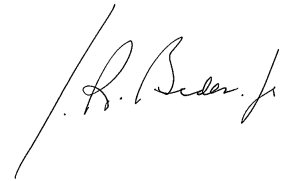
At the same time, my Administration is supporting the grandparents doing the critical work of caring for their grandchildren. At the height of the COVID-19 pandemic, my American Rescue Plan delivered \$145 million to fund counseling, training, and relief for grandparents and others acting as caregivers. Further, my Administration's National Strategy to Support Family Caregivers includes the unique role of grandparents who are raising grandchildren. To that end, we finalized a rule that ensures kinship foster parents, including grandparents, receive the same resources to care for their grandkids as other foster homes while giving their grandkids a home they know and love. We are also taking action across the Federal Government to support the health, well-being, and financial security of family caregivers and providing more care options for families supporting people with disabilities.

For grandparents who are looking to share their experience and wisdom, the AmeriCorps Seniors Foster Grandparent Program provides opportunities for seniors to mentor young people in their neighborhoods.

On National Grandparents Day, we celebrate the contributions of grandparents across the country, whose love is the glue of so many families. Today, may we reflect on our greatest memories with our grandparents and express our gratitude for the lasting impact they have made on each one of us and the very soul of our Nation.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 8, 2024, as National Grandparents Day. I call upon all Americans to celebrate the important role that grandparents play in the lives of their families and the children and grandchildren they love.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of September, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-ninth.

A handwritten signature in black ink, appearing to read "J. R. Biden Jr.", with a long, sweeping horizontal line extending to the left.

Presidential Documents

Executive Order 14126 of September 6, 2024

Investing in America and Investing in American Workers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. The Federal Government has made significant strides in implementing the Investing in America agenda, a historic set of recently enacted laws aimed at rebuilding American infrastructure, bringing back American manufacturing, and catalyzing a clean energy economy. That agenda has been furthered by Executive Order 14082 of September 12, 2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022), and Executive Order 14080 of August 25, 2022 (Implementation of the CHIPS Act of 2022). As implementation of the Investing in America agenda continues, it is essential that it supports the creation of well-paying jobs, especially union jobs, that improve opportunities for millions of Americans. Investing in American workers is critical to growing the economy equitably and resiliently, increasing our Nation's competitiveness, and ensuring our Nation's economic security. Workers understand the value of a good job that provides economic security for them and their families. Many companies also recognize that providing good-quality jobs while promoting workers' free and fair choice to join a union makes those companies employers of choice, creating a clear competitive advantage.

The Federal Government has long promoted high labor standards to ensure fair competition, stability, and efficiency on federally assisted projects. The use of high labor standards on federally assisted projects, such as the use of prevailing wages, project labor agreements, and equal employment opportunity policies, dates back almost a century. These tools ensure timely and economical completion of projects, provide a reliable source of highly skilled workers, support equitable workforce development, and improve worker health and safety on the job, while also improving outcomes for the communities in which projects are located. But these tools can and should be employed to a greater extent than they have been in the past.

For instance, providing incentives for federally assisted projects with high labor standards—including those using collective bargaining agreements, project labor agreements, and certain community benefits agreements—drives efficient project completion while also supporting high-quality jobs, worker safety, and broader investment in communities. Ensuring that workers on federally assisted projects are paid competitive and equitable wages will enhance worker productivity, generate higher-quality work, and reduce turnover, providing value for taxpayers. Promoting inclusivity, with equal opportunity for all qualified workers, will help ensure that federally assisted projects have the workforce needed to implement the Investing in America agenda.

Therefore, it is the policy of my Administration to promote the creation of equitable workforce development pathways for workers to obtain good jobs that pay family-sustaining wages, provide critical benefits, prevent workplace discrimination, ensure worker safety, and allow workers a free and fair chance to join a union.

Sec. 2. Definitions. For purposes of this order:

(a) The term “implementing agencies” means the Department of the Interior, the Department of Agriculture, the Department of Commerce, the Department of Labor, the Department of Housing and Urban Development, the

Department of Transportation, the Department of Energy, the Department of Education, the Department of Homeland Security, and the Environmental Protection Agency.

(b) The term “community benefits agreement” means an agreement signed by a developer and one or more community benefit groups—coalitions that are composed of neighborhood associations, faith-based organizations, unions, environmental groups, or other stakeholders—that identifies the community benefits a developer agrees to deliver in return for community support of the project.

(c) The term “Federal financial assistance” means funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to grants (whether formula or discretionary), loans, or rebates, or projects undertaken pursuant to any Federal program involving such grants, loans, or rebates.

(d) The term “Investing in America agenda” means the American Rescue Plan Act of 2021 (Public Law 117–2); the Infrastructure Investment and Jobs Act (Public Law 117–58); division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022; and Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022.

(e) The term “pre-apprenticeship program” has the meaning given to that term in 29 CFR 30.2.

(f) The term “pre-award processes” means the negotiations, interactions, and other communications between an implementing agency and an applicant after proposal submission and prior to award.

(g) The term “project labor agreement” means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

(h) The term “registered apprenticeship” means an industry-driven career pathway through which employers can develop and prepare their future workforces and individuals can obtain paid training; work experience; progressive wage increases; classroom instruction; and a portable, nationally recognized credential. A registered apprenticeship must meet the requirements for registration as set forth in 29 CFR parts 29 and 30.

(i) The term “underserved communities” refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in section 2 of Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), section 6 of Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council), and section 10 of Executive Order 14091 of February 16, 2023 (Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), and additionally includes formerly incarcerated individuals.

(j) The term “public workforce system” has the meaning given to the term “workforce development system” in 29 U.S.C. 3102(67).

Sec. 3. Implementation Priorities. In selecting projects for receiving Federal financial assistance from the Investing in America agenda, implementing agencies shall consider actions that, as appropriate and consistent with applicable law:

(a) Prioritize projects for selection that provide a clear plan for efficient project delivery by promoting positive labor-management relations. Examples of instruments and policies that implementing agencies could consider encouraging applicants to adopt, as appropriate, may include: project labor agreements, community benefits agreements, collective bargaining agreements, agreements intended to ensure the uninterrupted delivery of services,

agreements designed to facilitate first collective bargaining agreements, voluntary union recognition, and neutrality by the employer with respect to union organizing.

(b) Prioritize projects that enhance worker productivity by promoting family-sustaining wages. Examples of policies that implementing agencies could consider encouraging applicants to adopt, as appropriate, may include: payment of wages tied to a particular metric—such as wages not less than prevailing wages, the upper quartile of industry pay, or union pattern wage scales—including for workers in the care workforce, that is, individuals working in the fields of child care and long-term care; policies to promote equal pay and eliminate discriminatory pay practices, such as transparency measures; and other policies aligned with the Good Jobs Principles established by the Department of Commerce and the Department of Labor on June 21, 2022.

(c) Prioritize projects that supply critical benefits that promote economic security for workers, such as paid leave (including paid sick, family, and medical leave); health care; retirement benefits; and child, dependent, and elder care.

(d) Prioritize projects that promote and expand access to, and put in place policies that combat discrimination that limits employment in, high-quality jobs for workers from underserved communities. Examples of policies that implementing agencies could consider encouraging applicants to adopt, as appropriate, may include: workforce plans that contain strategies for recruiting, hiring, and retaining workers from underserved and local communities; policies that help prevent workplace discrimination and harassment, including through reporting structures and ongoing training; and participation in programs designed to support compliance with existing equal employment opportunity obligations under Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), as amended, section 503 of the Rehabilitation Act of 1973 (Public Law 93–112), the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (Public Law 92–540), as amended, and their implementing regulations.

(e) Prioritize projects that strengthen workforce development by expanding worker access to high-quality training and portable credentials that lead to good jobs. Examples of policies that implementing agencies could consider encouraging applicants to adopt, as appropriate, may include: the use of joint labor-management partnerships that invest in union-affiliated training programs, registered apprenticeships, and pre-apprenticeship programs that matriculate to registered apprenticeships; partnerships with organizations that deliver training such as community colleges, career and technical education programs, disability service organizations, the public workforce system, and the American Climate Corps; and the provision of supportive services necessary to complete training such as child care and transportation assistance.

(f) Prioritize projects that promote and protect worker health and safety through policies that encourage supplemental safety training, worker and union participation in the design and implementation of workplace safety and health management systems, and disclosure of occupational safety and health violations.

Sec. 4. *Implementation Approach.* (a) Implementing agencies shall, as appropriate and consistent with applicable law, consider the following strategies in connection with their Federal financial assistance programs to promote the implementation priorities identified in section 3 of this order:

- (i) including application evaluation criteria or selection factors that prioritize applicants that adopt or provide a specific plan to adopt those priorities;
- (ii) publishing best practice guides and other guidance to applicants to promote and implement those priorities, including guides on what types

of Federal financial assistance can be used for workforce development, such as supportive services;

(iii) engaging with applicants, where appropriate, during pre-award processes to ensure that applicants understand the benefits of those priorities for key programs and projects;

(iv) collecting relevant data to demonstrate funding recipients' progress, including by:

(A) requesting in funding notices or through other appropriate mechanisms that applicants address a series of "yes" or "no" questions regarding the implementation of those priorities to ensure transparency of labor practices and commitments;

(B) using existing compliance practices (such as the collection of certified payrolls when applicable) to collect detailed data on job quality, equity, and worker empowerment; and

(C) requesting reporting on key metrics and encouraging voluntary public reporting of additional relevant metrics developed by the implementing agency;

(v) promoting compliance with Federal law and commitments made by applicants, including, as appropriate, referring alleged violations of law to other executive departments and agencies for a determination of whether circumstances warrant the issuance of financial penalties or collection of relief for workers harmed, withholding further Federal financial assistance pending correction of a deficiency, recovery of some or all Federal funds, or debarment; and

(vi) supporting program staff and developing implementing agency expertise, including by consulting the Department of Labor and implementing agency labor advisors, to train program staff on how to implement those priorities and ensure that staff have the expertise needed to support the creation of good jobs through each phase of project delivery on federally assisted projects.

(b) Implementing agencies shall carry out their responsibilities under this order consistent with their responsibilities under the Justice40 Initiative set forth in Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad).

Sec. 5. Investing in Good Jobs Task Force. (a) There is established within the Executive Office of the President the Investing in Good Jobs Task Force (Task Force). The function of the Task Force is to coordinate policy development that supports efficient project delivery while also driving the creation of high-quality jobs and to otherwise support the effective implementation of this order. The Task Force shall be co-chaired by the Secretary of Labor and the Assistant to the President for Economic Policy and Director of the National Economic Council or their designees.

(b) In addition to the Co-Chairs, the Task Force shall consist of the following members or their designees:

(i) the Secretary of the Interior;

(ii) the Secretary of Agriculture;

(iii) the Secretary of Commerce;

(iv) the Secretary of Housing and Urban Development;

(v) the Secretary of Transportation;

(vi) the Secretary of Energy;

(vii) the Secretary of Education;

(viii) the Secretary of Homeland Security;

(ix) the Administrator of the Environmental Protection Agency;

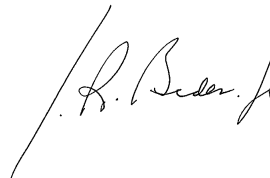
(x) the Assistant to the President and National Climate Advisor;

- (xi) the Senior Advisor to the President for International Climate Policy;
 - (xii) the Chair of the Council on Environmental Quality;
 - (xiii) the Chair of the Council of Economic Advisers;
 - (xiv) the Assistant to the President and Director of the Domestic Policy Council;
 - (xv) the Assistant to the President and Director of the Gender Policy Council; and
 - (xvi) the heads of other executive departments, agencies, and offices as the Co-Chairs may from time to time invite to participate.
- (c) The Task Force shall assist implementing agencies in promoting the implementation priorities identified in section 3 of this order. To do so, the Task Force shall:
- (i) share and, as appropriate, develop best practices related to promoting adoption of the implementation priorities identified in section 3 of this order, and provide technical assistance to implementing agencies in implementing these best practices;
 - (ii) support implementing agencies as they develop expertise in promoting efficient project delivery while also driving the creation of high-quality jobs; and
 - (iii) engage in other appropriate activities as determined by the Task Force, consistent with applicable law, to support effective implementation of this order.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
 - (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- (b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "J. R. Biden Jr.", is positioned in the upper right quadrant of the page.

THE WHITE HOUSE,
September 6, 2024.

Rules and Regulations

Federal Register

Vol. 89, No. 176

Wednesday, September 11, 2024

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

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA-2024-N-4018]

Medical Devices; Immunology and Microbiology Devices; Classification of the Whole Exome Sequencing Constituent Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the whole exome sequencing constituent device into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the whole exome sequencing constituent device's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective September 11, 2024. The classification was applicable on December 23, 2020.

FOR FURTHER INFORMATION CONTACT: Zivana Tezak, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3424, Silver Spring, MD 20993-0002, 301-796-6206, Zivana.Tezak@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the whole exome sequencing constituent device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as "postamendments devices" because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through "De Novo" classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (see also part 860, subpart D (21 CFR part 860, subpart D)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a

determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining "substantial equivalence"). Instead, sponsors can use the 510(k) process, when necessary, to market their device.

II. De Novo Classification

On August 2, 2019, FDA received Helix OpCo, LLC's request for De Novo classification of the Helix Learning Platform. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 23, 2020, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21

CFR 866.6000.¹ We have named the generic type of device whole exome sequencing constituent device, and it is identified as a device for germline whole exome sequencing of genomic deoxyribonucleic acid (DNA) isolated

from human specimens. The DNA sequence generated by this device is intended as input for clinical germline DNA assays that have FDA marketing authorization and are intended for use with this device.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—WHOLE EXOME SEQUENCING CONSTITUENT DEVICE RISKS AND MITIGATION MEASURES

Identified risks to health	Mitigation measures
Inaccurate test results and failure to provide results.	Certain design verification and validation, including certain analytical studies and clinical studies; and Certain labeling information, including certain performance information and device limitations.
Incorrect application or interpretation of results.	Certain design verification and validation, including certain clinical studies; and Certain labeling information, including certain performance information and device limitations.
User error and improper use of the device.	Certain design verification and validation, including certain analytical studies and clinical studies; and Certain labeling information, including certain performance information and device limitations.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification

submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801 and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 866.6000 to subpart G to read as follows:

§ 866.6000 Whole exome sequencing constituent device.

(a) Identification. A whole exome sequencing constituent device is for germline whole exome sequencing of genomic deoxyribonucleic acid (DNA) isolated from human specimens. The DNA sequence generated by this device is intended as input for clinical germline DNA assays that have FDA marketing authorization and are intended for use with this device.

(b) Classification. Class II (special controls). The special controls for this device are:

(1) The intended use on the device’s label and labeling required under § 809.10 of this chapter must include:

(i) The indicated variant types for which acceptable, as determined by FDA, validation data has been provided. Distinct variant types are considered as single nucleotide variant, insertion, deletion, tandem repeats, copy number variants, or gene rearrangements, and validated for specific sizes and lengths, as applicable.

(ii) The indicated specimen type(s) for which acceptable, as determined by FDA, validation data has been provided.

(2) The labeling required under § 809.10(b) of this chapter must include:

(i) The identification of, or the specifications for, the collection device or devices to be used for sample collection, as applicable.

(ii) A description of the reportable range, which is the region of the genome for which the assay is intended to provide results, as well as a description of the targeted regions of the genome that have enhanced coverage. This must include a description of any genomic regions that are excluded from the reportable region due to unacceptable risk of erroneous results, or for other reasons. A description of the clinically relevant genes excluded from the reportable range must also be included, if applicable.

(iii) A description of the design features and control elements, including the quality metrics and thresholds which are used for reporting the analytical range (the genomic DNA in the reportable range that passed the quality metrics in the run required for reporting to the user) that are incorporated into the testing procedure, that mitigate the risk of incorrect clinical results. The following metrics

¹ FDA notes that the “ACTION” caption for this final order is styled as “Final amendment; final order,” rather than “Final order.” Beginning in December 2019, this editorial change was made to

indicate that the document “amends” the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register’s (OFR) interpretations of the Federal Register Act (44

U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

are considered applicable in the generation of high confidence data and the established thresholds for these metrics for reporting must be described and be determined to be acceptable by FDA: cluster density and percent of cluster pass quality filter, percent of bases meeting the minimum base quality score, average coverage of reads, percent of reads mapped on target, percent of reportable region with coverage meeting the minimum requirement, percent of unassigned read indices, percent of reads for non-human DNA, allele fraction, and strand bias. Any alternate metrics used must be described and an acceptable, as determined by FDA, rationale for applicability must be provided.

(iv) A representative sample of the device output report(s) provided to users, which must include any relevant limitations of the device, as determined applicable by FDA.

(3) Design verification and validation must include:

(i) A detailed description of the impact of any software, including software applications and hardware-based devices that incorporate software, on the device's function.

(ii) Acceptable data, as determined by FDA, demonstrating how the key quality metrics and quality metric thresholds in the list in paragraph (b)(2)(iii) of this section for reporting were established and optimized for accuracy using appropriate DNA standards with established reference genomic sequence. Data must include, as applicable, base quality score, allele fraction for heterozygosity and coverage, and other applicable metrics.

(iii) Data demonstrating acceptable, as determined by FDA, analytical device performance using patient specimens representing the full spectrum of expected variant types reported across the genome and in genomic regions that are difficult to sequence. The number of specimens tested must be sufficient to obtain estimates of device performance that are representative of the device performance that can be expected for the reportable region and clinically relevant subsets of the reportable region, as applicable. For each study, data must include a summary of the key quality metric data; the number and percentage of true positives (TP), false positives (FP), and false negatives (FN); number and percentage of no-calls; positive percent agreement (PPA); negative percent agreement (NPA); positive predictive value (PPV); technical positive percent value (TPPV); and non-reference concordance (NRC). These data must be provided per sample and stratified by variant type. The variant

data must also be further stratified by size and zygosity (homozygous common allele, heterozygous, homozygous rare allele). Data demonstrating the accuracy assay based on guanine and cytosine (GC) content, pseudogenes, and proximity to short tandem repeats must also be presented. The data must be presented for the entire exome and also for clinically relevant subsets of the reportable region. For each study, the number of run failures and repeat/requeued specimens must be summarized.

(iv) Documentation of acceptance criteria that are applied to analytical and clinical validation studies, which must be justified based on the estimated risk of erroneous results on clinically significant genes and variants and must be clinically acceptable, as determined by FDA. The acceptance criteria must be pre-specified prior to clinical and analytical validation studies, and all validation testing results must be documented with respect to those acceptance criteria.

(v) Analytical validation must be demonstrated by conducting studies that provide:

(A) Data demonstrating acceptable, as determined by FDA, accuracy based on agreement with an acceptable, as determined by FDA, comparator method(s) that has been validated to have high accuracy and reproducibility. Accuracy of the test shall be evaluated with reference standards and clinical specimens for each indicated specimen type of a number determined acceptable by FDA, collected and processed in a manner consistent with the test's instructions for use.

(B) Data demonstrating acceptable, as determined by FDA, precision from a precision study using clinical samples to adequately evaluate intra-run, inter-run, and total variability across operator, instrument, lot, day, and site, as applicable. The samples must include the indicated range of DNA input. Precision, including repeatability and reproducibility, must be assessed by agreement between replicates, and also supported by sequencing quality metrics for targeted regions across the panel. Precision must be demonstrated per specimen and in aggregate. Precision data must be calculated and presented with and without no calls/invalid results.

(C) Data demonstrating acceptable, as determined by FDA, accuracy in the presence of clinically relevant levels of potential interfering substances that are present in the specimen type and intended use population, including, for example, endogenous substances,

exogenous substances, and microbes, as applicable.

(D) Data demonstrating the absence of sample cross contamination due to index swapping (misassignment).

(E) Data demonstrating that the pre-analytical steps such as DNA extraction are robust such that sources of variability in these steps and procedures do not diminish the accuracy and precision of the device.

(F) Data demonstrating that acceptable, as determined by FDA, device performance is maintained across the range of claimed DNA input concentrations for the assay.

(vi) Design verification and validation for software within the whole exome sequencing constituent device must include the following:

(A) Detailed description of the software, including specifications and requirements for the format of data input and output, such that users can determine if the device conforms to user needs and intended uses.

(B) Device design must include a detailed strategy to ensure cybersecurity risks that could lead to loss of genetic data security, are adequately addressed and mitigated (including device interface specifications and how safe reporting of the genetic test is maintained when software is updated). Verification and validation must include security testing to demonstrate effectiveness of the associated controls.

(C) Device design must ensure that a record of critical events, including a record of all genetic test orders using the whole exome sequencing constituent device, device malfunctions, and associated acknowledgments, is stored and accessible for an adequate period to allow for auditing of communications between the whole exome sequencing constituent device and downstream clinical genetic tests, and to facilitate the sharing of pertinent information with the responsible parties for those devices.

(vii) A protocol reviewed and determined acceptable by FDA, that specifies the verification and validation activities that will be performed for anticipated bioinformatic software modifications to reevaluate performance claims or performance specifications. This protocol must include a process for assessing whether a modification to the bioinformatics software could significantly affect the safety or effectiveness of the device. The protocol must include assessment metrics, acceptance criteria, and analytical methods for the performance testing of changes, as applicable. The protocol must also include the process for communicating to developers of

downstream clinical genetic tests the impact of the bioinformatics software change on the whole exome sequencing constituent system genetic data output so they may implement appropriate corresponding actions.

Dated: September 6, 2024.
Lauren K. Roth,
Associate Commissioner for Policy.
[FR Doc. 2024–20550 Filed 9–10–24; 8:45 am]
BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.410 to 1.440), revised as of April 1, 2024, in section 1.430(h)(2)–1, remove paragraph (ii) immediately following paragraph (b)(2).
[FR Doc. 2024–20701 Filed 9–10–24; 8:45 am]

BILLING CODE 0099–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0494; FRL–11442–02–R9]

Air Plan Approval; California; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a revision to the South Coast Air Quality Management District (SCAQMD or “the District”) portion of the California State Implementation Plan (SIP). This revision concerns the regulation of emissions of oxides of nitrogen (NO_x) and particulate matter (PM) associated with warehouses as indirect sources that attract or may attract mobile source emissions. The EPA is approving SCAQMD Rule 2305, “Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program,” to regulate these emission sources under the Clean Air Act (CAA or “the Act”) as a SIP strengthening.

DATES: This rule is effective October 11, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2023–0494. 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 a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

Table of Contents

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

I. Proposed Action

On October 12, 2023 (88 FR 70616) (“proposed rule”), the EPA proposed to approve SCAQMD Rule 2305 as a revision to the SCAQMD portion of the California SIP. Table 1 lists the SCAQMD rule addressed by the proposed rule with the dates that it was adopted by the SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	2305	Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program.	05/07/2021	08/13/2021

As described in the proposed rule, the purpose of SCAQMD Rule 2305 is to reduce local and regional emissions of NO_x and PM, and to facilitate local and regional emission reductions associated with warehouses and the mobile sources attracted to warehouses in the SCAQMD, to meet State and Federal air quality standards for ozone and fine PM (PM_{2.5}).¹ The rule applies within the jurisdiction of the SCAQMD, which includes all of Orange County, the non-desert portions of Los Angeles and San Bernardino counties, and all of

Riverside County (except for the Palo Verde Valley in far eastern Riverside County).

Through the adoption of the 2016 South Coast Air Quality Management Plan (AQMP), the SCAQMD adopted certain “facility-based mobile source measures,” including a measure under which the SCAQMD committed to assess and identify potential actions to further reduce emissions from emission sources associated with warehouse distribution centers.² In 2019, the EPA

approved the ozone portions of the 2016 South Coast AQMP, including the commitment to develop facility-based mobile source measures, including the measure focused on warehouse distribution centers.³ The 2016 AQMP does not include an emission reduction estimate for the facility-based mobile source measure related to warehouses. In 2021, after assessing potential actions to further reduce emissions associated

¹ 88 FR 70616, 70617 (October 12, 2023).

² SCAQMD, Final 2016 Air Quality Management Plan, March 2017, pp. 4–25, 4–28 and 4–29. The

2016 South Coast AQMP designates the warehouse measure as MOB–03 (“Emission Reductions at Warehouse Distribution Centers”).

³ 84 FR 52005 (October 1, 2019).

with warehouse distribution centers, the SCAQMD adopted Rule 2305 to fulfill the commitment from the AQMP.

In the proposed rule, the EPA described the requirements established by SCAQMD Rule 2305.⁴ Rule 2305 applies to owners and operators of warehouses located in the SCAQMD with greater than 100,000 square feet of indoor floor space in a single building and who operate at least 50,000 square feet of the warehouse for warehousing activities. Warehouse operators are required either to earn points from specified emission reduction activities or to pay a mitigation fee. The points that warehouse operators earn are referred to as Warehouse Actions and Investments to Reduce Emissions Points (WAIRE Points). Warehouse facility owners or warehouse landowners may elect to opt in to earn WAIRE Points and transfer these points to a warehouse operator at the same site. Both warehouse facility owners and operators must comply with certain recordkeeping and reporting requirements under the rule.⁵

The principal substantive requirement in SCAQMD Rule 2305 is the requirement that each warehouse operator, or owner that opts in,⁶ meet an annual compliance obligation by earning WAIRE Points. The annual compliance obligation, referred to as the WAIRE Points Compliance Obligation (WPCO), for each warehouse operator, or owner who opts in, is calculated based on Weighted Annual Truck Trips (WATTs) multiplied by a stringency factor (0.0025 points per WATT) and an annual variable (which accounts for the phased implementation of the rule).⁷ Warehouse operators, or owners who opt in, are required to earn WAIRE Points either: through the completion of specified actions from the list of actions in the WAIRE Menu,⁸ through completion of actions in an approved custom plan, through payment of a mitigation fee, or through a combination of these three options.⁹

In the proposed rule, the EPA described how it evaluated SCAQMD Rule 2305 and the basis for the EPA's preliminary conclusion that Rule 2305 generally meets all applicable CAA requirements with certain exceptions.¹⁰ In support of our proposed action, the EPA preliminarily determined that:

- The SCAQMD and CARB met the procedural requirements for adoption and submission of SIPs and SIP revisions under CAA sections 110(a)(1), 110(a)(2), 110(l) and 40 CFR 51.102;
- The SCAQMD has adequate legal authority to implement Rule 2305 under State law, and that SCAQMD's implementation of Rule 2305 would not be preempted or prohibited by any State or Federal law. The EPA noted that the SCAQMD's legal authority was the subject of litigation in the U.S. District Court¹¹ at the time of the proposal;¹²
- SCAQMD Rule 2305 generally includes the elements necessary to provide for legal and practical enforceability. This includes clear applicability, recordkeeping, reporting, and exemption requirements that are sufficiently specific so that the persons affected by the regulation are fairly on notice as to what the requirements and related compliance dates are. However, SCAQMD Rule 2305 has certain deficiencies related to enforceability¹³ that are the basis for the proposed approval as SIP-strengthening rather than a full approval;
- Although the EPA did not find a sufficient basis to credit Rule 2305 with achieving a specific amount of emissions reductions, the EPA expects that SCAQMD Rule 2305 will achieve additional emission reductions that will incrementally contribute to the overall reductions needed to attain the Ozone and PM_{2.5} NAAQS in the South Coast Air Basin and Coachella Valley;
- The sunset clause in Rule 2305 purports to permit SCAQMD to remove the requirement from the EPA-approved SIP without the process required by

section 110(l) at that time to support such removal. Failure to follow that process could interfere with attainment or reasonable further progress by foregoing emissions reductions needed for attainment or maintenance of the NAAQS at that future point in time; and

- In light of adoption of SCAQMD Rule 316 ("Fees for Rule 2305"), the SCAQMD will have adequate personnel and funding to implement Rule 2305.

For additional details on the SIP submission itself and the EPA's proposed action and related rationale, please see our proposed rule.

In this final rule, for the reasons given in the proposed rule and in the responses to comments provided in section II of this document, we are affirming the preliminary findings from the proposed rule that are listed in the previous paragraphs and are taking final action to approve Rule 2305 as a SIP-strengthening measure of the SCAQMD portion of the California SIP.

Since publication of the proposed rule, the U.S. District Court resolved the challenges to the SCAQMD's legal authority to enforce Rule 2305 in a case we refer to as "*CTA v. SCAQMD*" that was brought by the California Trucking Association (CTA or "Plaintiff") and Airlines for America (A4A or "Plaintiff-Intervenor") and that was grounded in alleged preemption under the CAA, the Airline Deregulation Act (ADA), and the Federal Aviation Administration Authorization Act (FAAAA). More specifically, in December 2023, the U.S. District Court denied motions for summary judgment filed by CTA and A4A and granted summary judgment to the SCAQMD with respect to the claims brought under the CAA, ADA, and FAAAA.¹⁴ In January 2024, the Court entered judgment in favor of the SCAQMD and dismissed on the merits the claims brought under the CAA, ADA, and FAAAA.¹⁵ In a separate order, based on a joint stipulation of the parties, the Court also dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaints.¹⁶ The time to file a notice of appeal of the judgment expired

⁴ 88 FR 70616, 70618–70620.

⁵ More specifically, warehouse owners are required to submit Warehouse Operations Notifications (WONs), and warehouse operators are required to submit Initial Site Information Reports (ISIRs) and Annual WAIRE Reports (AWRs) to SCAQMD. The warehouse owner may choose to comply with the requirement to submit ISIRs or AWRs on behalf of the warehouse operator or may be required to submit the reports if they are also the warehouse operator.

⁶ Under SCAQMD Rule 2305, warehouse operators are required to earn WAIRE points. Warehouse owners may choose to earn WAIRE points on behalf of the warehouse operator.

⁷ SCAQMD Rule 2305(d)(1)(A) and Tables 1 and 2.

⁸ SCAQMD Rule 2305, Table 3.

⁹ SCAQMD Rule 2305(d)(1) and (2).

¹⁰ 88 FR 70616, 70620–70625.

¹¹ *California Trucking Association v. South Coast Air Quality Management District*, C.D. Cal., Case #21-cv-06341 ("*CTA v. SCAQMD*").

¹² At the time of publication of the proposed rule, the legal challenge to SCAQMD Rule 2305 in the U.S. District Court had not yet been resolved, and because the Court had not ruled against the SCAQMD, and because there was no injunction in place, there were no known legal obstacles that would have precluded EPA's own analysis and preliminary finding that the SCAQMD has adequate legal authority to implement the rule. Since publication of the proposed rule, the legal challenge has been resolved in SCAQMD's favor and against the claims of preemption.

¹³ The proposed rule identified three specific types of deficiencies related to enforceability: two ambiguous definitions, the sunset clause and two instances of unbounded director's discretion.

¹⁴ *CTA v. SCAQMD*, Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023.

¹⁵ *CTA v. SCAQMD*, Judgment, Dkt. 168, January 18, 2024. <https://docs.justia.com/cases/federal/district-courts/california/cacdce/2:2021cv06341/827779/168>.

¹⁶ *CTA v. SCAQMD*, Order Re Joint Stipulation and Consent Motion to Dismiss with Prejudice (Dkt. 166), Dkt. 167, January 18, 2024.

on February 20, 2024, and neither CTA nor A4A filed a notice of appeal.¹⁷

II. Public Comments and EPA Responses

The EPA's proposed rule provided a 30-day public comment period. The EPA received a total of 14 comment letters or submissions in response to the proposed rule. Five comment letters were supportive of our proposed action.¹⁸ Two comment letters were generally supportive but include objections to certain aspects of our proposed action or rationale.¹⁹ Six comment letters or submissions opposed our proposed action,²⁰ and one submission is not germane to our action.²¹ All the comment letters or submissions can be found in the docket for this rulemaking. In the sections that follow, we summarize the significant adverse comments that oppose or object to certain aspects of our proposed action or rationale and provide our responses.

A. SCAQMD Comments and EPA Responses

SCAQMD Comment #1: The SCAQMD requests the EPA to clarify that Rule 2305, proposed as SIP strengthening without SIP credit, is fully federally enforceable.

EPA Response to SCAQMD Comment #1: The EPA agrees that SCAQMD Rule 2305 will be federally enforceable, upon EPA approval of the rule as part of the SIP. In our proposed rule, the EPA indicated that we had preliminarily found that the rule would not be “fully

enforceable,” based on certain deficiencies that we had identified in Rule 2305, such as certain ambiguous definitions, instances of impermissible director's discretion, and the sunset clause. The EPA noted that these specific deficiencies related to enforceability warrant a SIP-strengthening approval, rather than a full approval, and preclude the Agency from assigning SIP credit for the reductions resulting from Rule 2305 until the deficiencies are resolved. The EPA did not mean to suggest that Rule 2305 would not be federally enforceable by the SCAQMD, the EPA, and citizens pursuant to CAA section 304 once the EPA approves it as part of the SIP. Rather, we were referring to features of Rule 2305, such as the absence of necessary definitions, that may interfere with enforcement under certain circumstances, as discussed in more detail in EPA responses to SCAQMD Comments #2, #3 and #4.

SCAQMD Comment #2: The SCAQMD requested clarification of the EPA's statements in the proposal concerning the sunset clause in Section (h) of Rule 2305. SCAQMD asserts that Rule 2305's “sunset clause” does not render the rule unenforceable prior to the time when the clause is invoked and the Rule's requirements expire. In addition, the SCAQMD disagrees with the EPA's finding that the sunset clause could interfere with attainment or reasonable further progress of the NAAQS under CAA section 110(l). The SCAQMD asserts that the sunset clause would never go into effect without an analysis by the SCAQMD of the potential need for the rule for attainment of a new standard or for maintenance of an existing standard. The Executive Officer will then give a recommendation to the SCAQMD's Board on whether to retain or remove the sunset clause.

EPA Response to SCAQMD Comment #2: In the EPA's proposed rule, we identified the sunset clause in Rule 2305 as a deficiency related to enforceability and as a feature of the rule that could interfere with attainment or reasonable further progress by foregoing emissions reductions that may be needed for attainment or maintenance of the NAAQS.²² The EPA affirms those statements in this final rule. However, the EPA is clarifying that its concern is not that the sunset clause implicates enforceability prior to the time the District invokes the sunset clause and the requirements of the rule expire. We understand that, until invoked, the sunset clause has no effect on enforceability. However, after it is

invoked, the rule is no longer enforceable at all; hence, our concern in terms of enforceability. In this context, our use of the term “fully enforceable” refers to enforceability of a rule as an enforceable SIP requirement unless and until the EPA were to approve a SIP revision removing the provision from the SIP, in compliance with the procedural and substantive requirements applicable to such a SIP revision. For example, any future elimination of Rule 2305 from the SIP would have to entail an analysis under section 110(l) at that future point in time to assure that its removal would not interfere with attainment or reasonable further progress requirements for any relevant NAAQS or be inconsistent with any applicable requirements of the CAA at that future time. The EPA cannot approve a SIP provision with a sunset clause that would sidestep the applicable procedural and substantive requirements of the CAA and purport to predetermine such an outcome. The current sunset clause in Rule 2305 does not provide for that required process.²³

The SCAQMD also asked for clarification with respect to the EPA's concern that the sunset clause is a feature of the rule that could interfere with attainment or reasonable further progress because SCAQMD could potentially invoke it at a time when the emissions reductions associated with the rule would still be needed for such purposes for one or more NAAQS at that future point in time. To find the sunset clause acceptable at this time for this rulemaking, the EPA would need to determine that the sunset clause would not interfere with attainment or reasonable further progress or any other requirement of the CAA when, sometime in the future, it is invoked. But the EPA has no basis to make such a determination at the present time because we have no basis for knowing the precise conditions relative to CAA requirements that will exist in the South Coast Air Basin in the future when the District may seek to invoke the sunset clause. The EPA acknowledges the internal safeguards that SCAQMD has imposed upon itself in the sunset clause to prevent such interference. But we conclude that unilateral action on the part of the SCAQMD itself as contemplated in the sunset clause does not suffice to meet procedural and substantive requirements that would be

¹⁷ CTA v. SCAQMD, Defendants' Request for Publication of Order Denying Plaintiff and Plaintiff-Intervenor's Motion for Summary Judgement, Dkt. 169, March 5, 2024.

¹⁸ Supportive comment letters were submitted by the CARB, Clean Energy, Consumer Reports, a group of environmental and community groups, and certain members of Congress.

¹⁹ SCAQMD and the Center for Community Action and Environmental Justice (CCAIEJ) submitted letters that generally support the proposed action but also include comments that object to certain aspects of the proposed action or rationale. SCAQMD also submitted a late comment that addresses some of the objections raised by CCAIEJ, and SCAQMD's outside counsel in the CTA v. SCAQMD case submitted a late comment consisting of the Court's order denying the plaintiff's and plaintiff-intervenor's motions for summary judgment and granting summary judgment for the defendants.

²⁰ Airlines for America (A4A), a group of trucking and business associations (collectively referred to herein as “California Trucking Association” or “CTA”), the Port of Long Beach (POLB), International Warehouse Logistics Association (IWLA), a representative of a third-party warehouse business (“BAR Logistics”), and a private citizen (“Private Citizen”) submitted comments that oppose EPA's proposed action.

²¹ A private citizen submitted a comment that refers generally to the poor air quality conditions found in California but does not provide comments that directly relate to our proposed action.

²² 88 FR 70616, 70624.

²³ Memorandum dated September 23, 1987, from J. Craig Potter (EPA) to Addressees, Subject: “Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,” subsection titled “Effect of Changed Conditions.”

applicable to a revision of the SIP to eliminate Rule 2305, including a determination that rescission of the rule would not interfere with attainment or reasonable further progress of the NAAQS at that future point in time. To resolve this issue, the SCAQMD must remove the sunset clause and then, in the future, if the SCAQMD chooses to rescind Rule 2305, follow the normal course of action in rescinding rules from the SIP, *i.e.*, through a SIP revision and EPA approval in accordance with applicable procedural and substantive requirements, including CAA section 110(k) and section 110(l).

SCAQMD Comment #3: The SCAQMD does not agree with the proposed rule with respect to where the EPA finds that instances of director's discretion in the Custom WAIRE Plan option may impair enforceability of the rule. The SCAQMD contends that Rule 2305 does not grant the District's Executive Officer "unilateral and unbounded" discretion to determine Rule compliance. The SCAQMD states that Rule 2305 sets forth detailed, objective requirements for all aspects of Custom WAIRE Plans, including the contents of the application for such a plan, the District's review and approval of the application, and the tracking of the applicant's progress in completing the actions approved as part of the Custom WAIRE Plan.

The SCAQMD stated that Rule 2305 includes provisions that authorize the Executive Officer to make only two limited determinations regarding Custom WAIRE Plans. The SCAQMD contends that in neither case is the Executive Officer's discretion "unilateral and unbounded." First, in directing the Executive Officer to assess whether the emissions reductions associated with a Custom WAIRE Plan are "quantifiable, verifiable, and real," the SCAQMD states that the Rule articulates well-understood criteria of the kind that the EPA has already approved for inclusion in the SIP many times before. The SCAQMD also notes that, under Section (d)(4)(B)(v), it also must make Custom WAIRE Plans available for public review for 30 days before the Executive Officer can approve them, during which time interested parties, including the EPA, can comment on whether a proposed plan satisfies the Rule's criteria.

Second, the SCAQMD notes that the provision of Rule 2305 that directs the Executive Officer to determine whether a warehouse operator is "making adequate progress" to complete an approved Custom WAIRE Plan also requires that the District provide 30 days' notice to the owner or operator

and an explanation of any deficiencies in implementation before the District can rescind the Custom WAIRE Plan. If the warehouse operator or owner ultimately withdraws the Custom WAIRE Plan, the warehouse operator must comply with Rule 2305 via the WAIRE Menu or the mitigation fee options, neither of which involves Executive Officer discretion. Thus, the SCAQMD contends that any exercise of discretion in this instance can only serve to protect air quality by requiring the warehouse operator to comply with other options; it would not grant the operator any flexibility not provided expressly in Rule 2305. In short, in SCAQMD's view, nothing about the Custom WAIRE Plan provisions impairs the Federal enforceability of the Rule.

EPA Response to SCAQMD Comment #3: In EPA's proposed rule, we identified two specific instances of director's discretion provisions in connection with the Custom WAIRE Plan option under Rule 2305 and preliminarily concluded that these provisions are impermissible because they would give unbounded authority to SCAQMD to make changes that the EPA cannot evaluate the impact of and because they may impair enforceability of the rule.²⁴ The EPA has reviewed the SCAQMD's comment on this issue and the related citations provided by the SCAQMD. The EPA's evaluation of these comments has caused the agency to revise its view of one of the two provisions and also identified an additional potential impermissible director's discretion provision within Rule 2305.

Based on that review, for reasons given below, we affirm our finding that the Executive Officer's discretion to determine whether WAIRE Points from a Custom WAIRE Plan are "quantifiable, verifiable, and real" is insufficiently bounded, but we now agree that the Executive Officer's discretion to determine whether a warehouse owner or operator is making adequate progress to complete an approved Custom WAIRE Plan is appropriately bounded in a way that the EPA can approve.

First, with respect to the Executive Officer's discretion to determine whether WAIRE Points from a Custom WAIRE Plan are "quantifiable, verifiable, and real," we note that the language in Rule 2305(d)(4)(A)(iii) gives the Executive Officer of SCAQMD the sole authority to determine whether emissions reductions are valid, does not impose specific standards or parameters for such a determination, and thus potentially impedes the EPA and the

public from enforcing this provision in the event either were to disagree with the District's conclusion about the validity of the emission reductions.²⁵ We acknowledge Section (d)(4)(B)(v) of Rule 2305 as providing for public review of Custom WAIRE Plan applications prior to the SCAQMD approval, but we do not find the public process provided on individual applications to be a substitute for provisions in the rule that limit the Executive Officer's exercise of discretion within adequate specific boundaries. Moreover, without such boundaries and without an analysis of the potential impacts that exercise of this discretion could have, the EPA cannot evaluate the consequences of this director's discretion feature of Rule 2305 and what that could mean in terms of stringency, emission reduction credit, and other important considerations for approval of a SIP provision. Thus, this provision contains impermissible director's discretion that is inconsistent with CAA requirements.

In its comments, the SCAQMD asserted that the terms "quantifiable, verifiable, and real" are, "well-understood criteria of the kind that EPA has already approved for inclusion in the SIP many times before" and cites SCAQMD Rule 1309, "Emission Reduction Credits," Bay Area AQMD Rule 2–2–605.1, "New Source Review," and San Joaquin Valley UAPCD Rule 2201, "New and Modified Stationary Source Review Rule." These rules pertain to the pre-construction New Source Review (NSR) permitting program that generally requires that offsets needed under the program are real, quantifiable, surplus, permanent, and federally enforceable. However, for example, SCAQMD's definitions rule for its NSR program, Rule 1302, defines "quantifiable emissions," "permanent," and "federally enforceable." These definitions are not applicable to SCAQMD Rule 2305, and, notably, "verifiable" is not a term commonly used in the NSR program. Thus, the EPA disagrees that the ostensible understood meaning of these terms negates the director's discretion concerns about Section (d)(4)(A)(iii).

²⁵ A potential remedy would be to remove "as determined by the Executive Officer" from the provision and add definitions in Rule 2305 for the terms "quantifiable," "verifiable," and "real." Also, both Sections (d)(4)(A)(ii) and (d)(4)(A)(iii) in Rule 2305 rely on the WAIRE Program Implementation Guidelines to determine the WAIRE Points for a given action under a Custom WAIRE Plan. As such, to fully address the issue of insufficiently bounded director's discretion in Rule 2305, the SCAQMD should adopt and submit the WAIRE Program Implementation Guidelines to the EPA as a SIP revision.

The provision would authorize the Executive Officer unilaterally to make key determinations that would bind the EPA and other parties and potentially interfere with enforcement of the requirements of Rule 2305.

Second, with respect to the Executive Officer's discretion to determine that a warehouse facility owner or operator is not making adequate progress to complete an approved Custom WAIRE Plan as provided in Rule 2305(d)(4)(D), after consideration of SCAQMD's comments on the proposal we find that this is not an impermissible director's discretion provision. Based upon additional explanation in SCAQMD's comments, we now agree that the discretion within this specific provision is sufficiently bounded and that the consequences of exercise of the authority can be adequately understood and evaluated by the EPA at the time of this approval. SCAQMD has explained that the scope of this discretion is limited to the issue of whether or not the regulated party has made sufficient progress to complete a Custom WAIRE Plan. Although there are no specific regulatory definitions or other guideposts to specify what would constitute sufficient progress, the EPA concludes that in this instance the scope of discretion is itself limited in a way that does not functionally authorize SCAQMD to revise Rule 2305 without meeting proper procedural requirements or interfere with potential enforcement of the requirements of Rule 2305. In the event that the Executive Officer were to conclude that a warehouse facility owner or operator is not making adequate progress to complete an approved Custom WAIRE Plan ("Plan") and rescinds approval of the Plan, then the warehouse owner or operator must still comply with Rule 2305 under the remaining options provided in the rule. Thus, at the time of this approval the EPA can evaluate the boundaries on the exercise of discretion and can anticipate what the potential impacts would be on Rule 2305 were the Executive Officer to exercise this particular form of discretion.

Further, we note that, under Section (d)(4)(E), Rule 2305 provides that, if the expected WAIRE Points from an approved Custom WAIRE Plan are not earned during the applicable compliance period, the warehouse facility owner or operator whose Custom WAIRE Plan was approved shall be in violation of this rule unless the owner or operator demonstrates that they have met their Warehouse Points Compliance Obligation by the date that they submit their Annual WAIRE Report using WAIRE Points earned through

completion of actions listed in the WAIRE menu or through mitigation fees. Thus, Rule 2305 provides for consequences for failure to complete an approved Custom WAIRE Plan even if the Executive Officer fails to exercise discretion where warranted to make the determination under Section (d)(4)(D) of Rule 2305 that a warehouse facility or land owner or operator is not making adequate progress.

Finally, the EPA's review of Rule 2305 in light of SCAQMD's comments concerning the director's discretion issue caused us to examine the provisions of the rule again more closely. In the proposal, we had noted that Section (g)(3) provides that the Executive Officer can grant full or partial exemptions from compliance with the WAIRE Points requirements of Rule 2305 under certain circumstances.²⁶ In the event of unforeseen circumstances that are beyond the control of the owner or operator, the owner or operator may apply for a partial or full exemption. Although Section (g)(3) imposes some boundaries on this authority, it would nevertheless operate to allow the Executive Officer unilaterally to excuse violations of Rule 2305.

The State and District have adopted Rule 2305 applicable to owners or operators of warehouses to achieve emission reductions to help provide for attainment and maintenance of the NAAQS. To the extent that Rule 2305 is a SIP emission limitation, it must meet the definition of that term in CAA section 302(k), which provides that it must be continuous. If a SIP provision is an emission limitation, to be continuous it could not include an exemption for malfunctions, such as that provided in Section (g)(3), including ad hoc exemptions that the Executive Officer might grant through exercise of director's discretion. Such exemption decisions would be binding on other parties and thus impede potential enforcement actions by the EPA or others that may not agree with the decision of the Executive Officer, thereby interfering with enforcement by the EPA and other parties and imposing the enforcement discretion decisions of the Executive Officer on the EPA and other parties.

SCAQMD Comment #4: The SCAQMD acknowledges that the definitions in Rule 2305 for the terms "Near-Zero Emission (NZE) Trucks" and "Zero-Emission (ZE) Trucks" rely on sections of the California Code of Regulations (CCR) that are not part of the SIP but disagrees that such reliance may make

the terms ambiguous, which in turn may have implications for enforceability.

EPA Response to SCAQMD Comment #4: In EPA's proposed rule, the EPA noted that two critical definitions in Rule 2305 rely on cross-references to CCR sections that are not approved as part of the SIP, and thus, the definitions could be ambiguous for the purposes of enforcement of the SIP. As a basic principle, the EPA believes that all SIP provisions should be clear and unambiguous to assure that regulated entities, regulators, and courts can have a common understanding of the requirements. Failure to incorporate into the SIP definitions of key terms can lead to unintended and unnecessary ambiguities in a SIP provision that may only come to light later. It is possible that, in an enforcement proceeding for SIP requirements, a court may judicially notice CCR sections that are not part of the SIP but that a SIP rule cross-references, to interpret the terms at issue. However, case law warrants caution in the context of reliance on out-of-SIP materials in a SIP enforcement proceeding.²⁷

The EPA acknowledges that the existing cross references to CCR provisions outside Rule 2305 do provide definitions of these terms, but this fact also raises a different issue. Because the CCR sections at issue are not part of the approved SIP, the EPA is concerned that CARB could revise these defined terms outside of the statutory SIP revision process thereby potentially amending Rule 2305 (through the cross-reference to the CCR sections) unilaterally also outside of the SIP revision process. Inclusion of necessary definitions within the SIP provision itself, or otherwise submitting them for inclusion in the SIP, obviates these potential problems. Thus, the EPA affirms our statements in the proposed rule as to these two definitions. However, the EPA anticipates that CARB will be submitting the CCR definitional sections on which Rule 2305 relies for inclusion into the SIP and that the issue will be resolved upon the EPA's approval of the definitions as part of the SIP.²⁸

SCAQMD Comment #5: The SCAQMD comments that the proposed rule incorrectly describes the WAIRE Program Online Portal (POP) as

²⁷ *El Comité Para el Bienestar de Earlimart v. Warmerdam*, 539 F.3d 1062 (9th Cir. 2008) (CAA enforcement by citizen group of requirements precluded because, while cited in connection with the EPA's approval of the SIP, the specific requirements were not incorporated into SIP).

²⁸ 88 FR 70616, 70623. On August 8, 2023, CARB submitted the Advanced Clean Trucks Regulation, which includes one of the two CCR sections, 13 CCR section 1963, to the EPA for approval as a SIP revision.

²⁶ 88 FR 70616, 70618.

providing the public information about how warehouse operators and owners are complying with Rule 2305 and how WAIRE Mitigation Program funds are spent. SCAQMD clarifies that the function and purpose of the WAIRE POP is to collect information from regulated entities (warehouse owners and operators), not to provide or distribute information about the WAIRE Program to the public. The SCAQMD indicates that it has created a separate web page to provide information on the WAIRE Program to the public. That page hosts links to various resources related to the WAIRE Program, including the WAIRE Program's annual report. The SCAQMD indicates that it is evaluating a proposal to include additional WAIRE Program data, including aggregated information about compliance obligations and completed compliance actions, in its Facility Information Detail ("FIND") tool.

EPA Response to SCAQMD Comment #5: The EPA appreciates the clarification by the SCAQMD regarding the function and purpose of the WAIRE POP. The EPA understands that a separate web page created by the SCAQMD provides the public with certain information about the WAIRE program. In addition, the public may request access to WAIRE data not available on-line from SCAQMD, such as the periodic reports that warehouse owners and operators are required to submit to the SCAQMD under Rule 2305, through the California Public Records Act requests under State law.²⁹ While there is no CAA requirement that such data be made available on-line, the EPA notes that making such data available on-line would allow the public to access the information in a more timely manner than making a request under the California Public Records Act.

B. The Port of Long Beach (POLB) Comments and EPA Responses

POLB Comment #1: Referring to the *CTA v. SCAQMD* case, the POLB asserts that it is improper for the EPA to issue a rule interpreting SCAQMD's legal authority to adopt and implement an indirect source review (ISR) rule while a legal action brought by CTA concerning the validity of the rule is pending. The POLB contends that the EPA should defer taking action until the judiciary resolves the pending litigation.

EPA Response to POLB Comment #1: The EPA disagrees that it is improper for us to take action on a SIP submission in a situation where the State or local rules submitted for approval into the SIP are subject to a pending legal challenge. First, CAA section 110(k) requires the EPA to take action on submissions no later than 12 months after the EPA finds the submission complete or it becomes complete by operation of law. If the EPA does not act within the prescribed period, the EPA may be subject to a deadline lawsuit to compel that action. The CAA does not provide additional time for EPA action on a submission merely because there is a pending legal challenge related to some aspect of the SIP submission.³⁰

More importantly, however, EPA separately considered the legal authority issue involved in the then pending litigation to which the commenter referred. Pursuant to CAA section 110(a)(2)(E), a necessary part of the EPA's evaluation of a SIP submission is whether the submission includes necessary assurances that the State (or District, in this case) has adequate authority under State law to carry out such SIP submission and is not prohibited by any provision of Federal or State law from doing so.³¹ For this rulemaking action, the EPA needed to address the issue of whether the State and District have adequate legal authority under State law to implement SCAQMD Rule 2305, and whether the State or District was prohibited by any Federal or State law from implementing Rule 2305, as part of the basis for proposing approval or disapproval of SCAQMD Rule 2305 under CAA section 110(k). The mere fact of a pending judicial challenge does not impede EPA from making a determination that the State and District have provided necessary assurances that they have adequate authority. The EPA set forth its evaluation of the State and District's explanation of their authority for Rule 2305 in the proposal rule.³²

Lastly, the EPA notes that, in any event, the *CTA v. SCAQMD* case to which the POLB refers has been resolved in favor of the SCAQMD, and we have taken the Court's actions into account in finalizing approval of SCAQMD Rule 2305 as a revision to the

California SIP.³³ In short, the court's actions confirmed the EPA's view that the State and district are not prohibited by any Federal law from carrying out Rule 2305 and thus have provided the necessary assurances of adequate legal authority for Rule 2305 for the purposes of CAA section 110(a)(2)(E).

POLB Comment #2: The POLB objects to the EPA's evaluation in the proposed rule of the legal authority of the SCAQMD to implement Rule 2305 and asserts that SCAQMD Rule 2305 is preempted because, although styled as an ISR rule, it directly regulates mobile sources and "compels the manufacturer or user to change emission control design of mobile sources or creates incentives so onerous as to in effect be a purchase mandate." The POLB states that Rule 2305 does both of these and is, therefore, preempted by the CAA.

EPA Response to POLB Comment #2: As to the issue of whether SCAQMD Rule 2305 represents a legitimate ISR rule as authorized by CAA section 110(a)(5), we considered whether Rule 2305 represents a de facto purchase requirement for ZE or NZE trucks and thus whether it might be preempted under CAA section 209(a).³⁴ In the EPA's proposed rule, we preliminarily concluded that, in adopting Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a).

The EPA based its preliminary conclusion, in part, on the similarities between SCAQMD Rule 2305 and the ISR rule at issue in the *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d 730 (9th Cir. 2010) (*NAHB v. SJVUAPCD*) case, including the design of Rule 2305 to regulate at the level of the indirect source, not at the level of mobile sources the indirect source may attract. In Rule 2305, "[t]he 'baseline' amount of emissions, and the required reduction in emissions from that baseline, are both calculated in terms of the [indirect

²⁹ The California Public Records Act is a State law that provides the public the right to inspect and the right to promptly obtain copies of "public records." The California Public Records Act does not provide for creation or preparation of a record that does not exist at the time of the request. The California Public Records Act can be found at California Government Code sections 7920–7931.

³⁰ In this instance, SCAQMD Rule 2305 was submitted to the EPA as a SIP revision on August 13, 2021, and was deemed complete by operation of law on February 13, 2022. In July 2023, we were sued for failure to take action within the prescribed period. See *Center for Community Action and Environmental Justice v. EPA*, 23-cv-03571, U.S. District Court, Northern District of California.

³¹ See CAA section 110(a)(2)(E).

³² 88 FR 70616, 70620–70623.

³³ As noted previously in this document, in December 2023, the U.S. District Court denied motions for summary judgment filed by CTA and A4A and granted summary judgment to the SCAQMD with respect to the claims brought under the CAA, ADA, and FAAAA. Subsequently, the Court has entered judgment in favor of the SCAQMD and dismissed on the merits the claims brought under the CAA, ADA, and FAAAA, and by separate order, the Court also dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaint. No appeal was filed in this case.

³⁴ 88 FR 70616, 70622–70623.

source site] as a whole.”³⁵ This “site-based” approach to regulating emissions “is precisely what allows the Rule to avoid preemption under section 209(e)(2).”³⁶ That Rule 2305 is properly characterized as an ISR program under CAA section 110(a)(5) distinguishes it from the vehicle purchase mandate at issue in the Supreme Court *EMA* case.³⁷

In addition, the EPA considered that Rule 2305 lacks the indicia of a *de facto* regulation of either motor vehicles or nonroad vehicles or engines. As explained further in the proposed rule, Rule 2305 applies to warehouse operators and provides multiple options for meeting the annual WPCO, a metric that is based not on truck emissions but on truck trips. The number of truck visits is used in Rule 2305 because it is representative of the total activity at, and emissions associated with, a warehouse. The various options available (WAIRE Menu, Custom WAIRE Plan, or Mitigation Fee) to warehouse operators that do not involve acquisition of, or contracting for, ZE or NZE trucks to earn WAIRE Points further support a conclusion that in Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a).

Regardless of the commenter’s assertions about alleged preemption, in the months following publication of the proposed rule, the U.S. District Court entered judgment in favor of the SCAQMD in the *CTA v. SCAQMD* case and dismissed on the merits the claims brought against SCAQMD’s adoption of Rule 2305 under the CAA, ADA and FAAAA.³⁸ For this final rule, we have reviewed the decision³⁹ of the District Court and find that it supports our preliminary conclusion set forth in the

proposed rule that the SCAQMD is not prohibited from implementing Rule 2305 under the CAA. Moreover, we are aware of no other legal challenge to Rule 2305 that might prevent SCAQMD from carrying out Rule 2305. Therefore, the EPA affirms in this final rule our conclusion that, in adopting Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a).

POLB Comment #3: The POLB further asserts that the EPA’s reliance on the decision in *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d 730, 737–738 (9th Cir. 2010) is misplaced because the ISR regulation at issue in that case applied to new sources whereas SCAQMD Rule 2305 applies to both new and existing warehouses. Moreover, the POLB states that the omission of the word “existing” in CAA section 110(a)(5)(D) indicates that Congress intended to exclude existing sources from ISR.

EPA’s Response to POLB Comment #3: With respect to the issue of whether ISR programs as described in CAA section 110(a)(5) may apply to existing as well as new or modified indirect sources, the EPA first notes that the EPA did not rely on the decision in *NAHB v. SJVUAPCD* in evaluating this particular issue. Instead, in the proposed rule, the EPA discussed how the Agency considered this particular issue by evaluating the statutory language in CAA sections 110(a)(5)(D), (E) and 116.⁴⁰ More specifically, the EPA acknowledged that the language of CAA section 110(a)(5) does not explicitly answer the question whether States may include both existing and new sources and cited, as an example, the statutory language in CAA section 110(a)(5)(D) cited by the POLB.

As explained in the preamble to the proposed rule, CAA section 110(a)(5)(D) in relevant part defines an indirect source review program as one “including” such measures as new or modified sources. The EPA does not, however, read this definition to restrict States from having such programs that extend to existing sources if they elect to do so. Instead, the use of the term “including” preceding the reference to “new or modified indirect source” indicates that regulation of new or modified indirect sources is illustrative of the scope of this provision, not limiting. The EPA also noted the statutory language in CAA section

110(a)(5)(C), which defines “indirect source” more broadly to encompass both existing and new sources, and CAA section 116, which explicitly provides that States retain authority to regulate more stringently in SIP provisions than otherwise required by Federal law, except where preempted from doing so. The EPA continues to find that the best reading of this language is that States may include existing sources as a permissible category within a CAA indirect source program. The POLB does not address the EPA’s discussion of either CAA section 110(a)(5)(D) or CAA section 116 in its comments.

Moreover, as the Ninth Circuit observed in *NAHB*, the purpose of Congress’s enactment of the indirect source review provisions in section 110(a)(5) was “to return power to states and localities” over indirect source programs.⁴¹ This purpose further corroborates EPA’s view that the best reading of the Act does not preclude a State’s ability to adopt an indirect source review program that covers existing sources.

In the EPA’s proposed rule, upon its review of CAA section 110(a)(5), the EPA acknowledged that the statutory language does not clearly indicate whether Congress actually intended the definition of “indirect source program” to function as a restriction on the ability of States to adopt an indirect source program that extends to existing sources as well as new or modified sources and for the EPA to have authority to in turn approve such a program into the State’s SIP. The EPA indicated that the EPA did not consider such a restrictive reading of the provision to be reasonable or logical, absent a clearer prohibition.⁴² That is, read in light of the above-described statutory context and purpose, the best reading of the statute is that States may establish indirect source programs for new and modified sources, as well as existing sources.

POLB Comment #4: The POLB also states that the EPA does not have the experience or expertise to interpret the ADA or the FAAAA, and its opinion regarding preemption concerning these laws is outside the EPA’s purview.

EPA’s Response to POLB Comment #4: Under CAA section 110(a)(2)(E), the EPA must evaluate SIP submissions to ensure that the State has provided necessary assurances that the State (or District, in this case) is not prohibited by any provision of State or Federal law from carrying out the SIP or SIP revision (in this case, Rule 2305). The SIP

³⁵ 88 FR 70616, 70622, citing *NAHB v. SJVUAPCD*, 627 F.3d 730, 737.

³⁶ 88 FR 70616, 70622, citing *NAHB v. SJVUAPCD*, 627 F.3d 730, 739.

³⁷ *Engine Manufacturers Ass’n v. South Coast Air Quality Management District*, 541 U.S. 24655 (2004) (“*EMA*”). In *EMA*, the Supreme Court held that a “standard” under CAA section 209(a), which the Court described as “a requirement that a vehicle or engine not emit more than a certain amount of pollutant, be equipped with a certain type of pollution-control device, or have some other design feature related to the control of emissions,” is preempted under Section 209(a) whether applied to manufacturers through a sales mandate or to buyers through a purchase mandate. *EMA*, at 253–255.

³⁸ *CTA v. SCAQMD*, Judgment, Dkt. 168, January 18, 2024.

³⁹ *CTA v. SCAQMD*, Order Re: Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America’s Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023), pp. 19–29.

⁴⁰ 88 FR 70616, 70622.

⁴¹ 627 F.3d at 738 (citing *Sierra Club v. Larson*, 2 F.3d 462, 467 (1st Cir. 1993)).

⁴² 88 FR 70616, 70622.

submission for SCAQMD Rule 2305 includes the District's documentation of comments submitted during the District's rule adoption process and the District's responses to those comments. Through the EPA's review of this material, the EPA was made aware of the claims regarding possible preemption under the ADA or FAAAA, and thus, in accordance with section 110(a)(2)(E), we made a preliminary judgment about possible preemption (in the context of assuring that no Federal or State law prevented the carrying out of the SIP) to provide an appropriate basis to propose approval of SCAQMD Rule 2305 under CAA section 110(k).

Regardless of the commenter's assertions about alleged preemption, in the months following publication of the proposed rule, the U.S. District Court entered judgment in favor of the SCAQMD in the *CTA v. SCAQMD* case and dismissed on the merits the claims brought against SCAQMD's adoption of Rule 2305 under the CAA, ADA and FAAAA.⁴³ For this final rule, we have reviewed the decision⁴⁴ of the District Court and find that it supports our preliminary conclusion set forth in the proposed rule that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAAA for the purpose of CAA section 110(a)(2)(E). Moreover, we are aware of no other legal challenge to Rule 2305 that might prevent SCAQMD from carrying out Rule 2305. Lastly, we note that we consulted with the U.S. Department of Transportation on our responses to comments related to ADA and FAAAA preemption in this final rule. Therefore, the EPA affirms in this final rule the conclusion that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAAA.

POLB Comment #5: Citing the Supreme Court's decision in *West Virginia v. EPA*,⁴⁵ the POLB also states that the EPA's view that SCAQMD Rule 2305 should be upheld absent a "clearer prohibition" in the CAA conflicts with the "major questions doctrine" in which an executive agency cannot regulate unless it can "point to clear congressional authorization" to do so.

EPA's Response to POLB Comment #5: The POLB raises this particular objection to the EPA's proposed approval in a single sentence and fails

to elaborate on how the EPA's action conflicts with the major questions doctrine. In any event, the EPA does not believe the major questions doctrine is applicable here.

The major questions doctrine provides that in extraordinary cases involving statutes that confer authority upon an administrative agency, the "history and the breadth of the authority that [the Agency] has asserted," and the "economic and political significance" of that assertion, provide a "reason to hesitate before concluding that Congress" meant to confer such authority.⁴⁶ In such cases, the agency must point to "clear congressional authorization" for the authority it claims.⁴⁷ As an initial matter, the POLB's comment fails to address with specificity why it believes the major questions doctrine applies at all. For example, the POLB's comment does not speak to the economic or political significance that would result from the approval of Rule 2305 into the SIP, much less allege that such impacts rise to a level that could implicate the major questions doctrine. Nor does the POLB explain how the EPA's approval of a local government rule in a SIP that meets the requirements of the CAA amounts to a transformative expansion of Federal regulatory authority. The absence of these factors refutes the idea that the major questions doctrine is implicated by this final rule. The interpretation of CAA section 110(a)(5) set forth in the proposed rule and again in this final rule does not broaden EPA's authority to any degree. Rather, the conclusion that Rule 2305 is an ISR program entails only that the SCAQMD may exercise its traditional police powers in this area.⁴⁸

In any case, Congress has spoken clearly regarding this issue. As explained above, the text of section 110(a)(5), in light of statutory context, purpose, and history, indicates that Congress may approve State indirect

source review programs that extend to existing sources. For the reasons set forth here and in the proposed rule, the EPA affirms the conclusion that the District is not precluded from regulating both existing and new warehouses in Rule 2305, and thus, this poses no impediment to approving the rule into the SIP.⁴⁹

POLB Comment #6: The POLB asserts that SCAQMD Rule 2305's mitigation fee is an unlawful tax under State of California's Proposition 26. Proposition 26 amended the State Constitution to state that "levy, charge, or exaction of any kind imposed by a local government" is a tax except for certain exceptions. The POLB asserts that the mitigation fee in Rule 2305 does not fall under any of the exceptions and is intended to generate revenue rather than recoup costs associated with a regulatory program and is therefore unlawful unless the District secures voter approval.

EPA's Response to POLB Comment #6: As to the issue of whether Rule 2305's mitigation fee is an unlawful tax under State law, the EPA relied upon a legal analysis from the State Attorney General's Office⁵⁰ that was submitted as part of the SIP submission package and that concludes that the mitigation fee is not an unlawful tax under the California Constitution because, as a compliance option, the fee is not compulsory.⁵¹ The legal analysis from the State Attorney General's Office specifically addresses the issues raised by Proposition 26.⁵²

⁴⁹ Our conclusion is further supported by the decision in the *CTA v. SCAQMD* case. See, *CTA v. SCAQMD*, Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023, p. 28 ("Nothing in the text, structure, or purpose of the indirect-source-review provision suggests that this phrase limits indirect source reviews to those based on new and modified indirect sources").

⁵⁰ Letter dated May 6, 2021, from Robert Swanson, Deputy Attorney General, California Department of Justice, to Ellen Peter, Chief Counsel, CARB, included as an enclosure to a letter dated May 6, 2021, from Ellen M. Peter, to Wayne Nastri, Executive Officer, SCAQMD.

⁵¹ See 88 FR 70616, 70621. The POLB notes that the decision in *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d 730 (9th Cir. 2010) ("*NAHB v. SJVUAPCD*") was decided before Proposition 26 amended the State Constitution to provide for voter approval of certain levies or charges as a tax except for certain enumerated exceptions. The EPA's evaluation of the issue of whether the mitigation fee represents an unlawful tax under State law does not rely on the decision in *NAHB v. SJVUAPCD* but relies instead on the legal analysis from the State Attorney General's Office.

⁵² Letter dated May 6, 2021, from Robert Swanson, Deputy Attorney General, California

Continued

⁴³ *CTA v. SCAQMD*, Judgment, Dkt. 168, January 18, 2024.

⁴⁴ *CTA v. SCAQMD*, Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023), pp. 29–34.

⁴⁵ *West Virginia v. EPA*, 597 U.S. 697 (2022).

⁴⁶ *Id.*, at 700, citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159–160 (2000).

⁴⁷ *Id.*, citing *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014).

⁴⁸ See *CTA v. SCAQMD*, Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023), at 34 ("Even if this argument has not been waived, the major questions doctrine, as applied by the Supreme Court, applies to the balance of power between Congress and Federal agencies, not the balance of power between the Federal Government and the States. Moreover, the premise for the major questions doctrine suggests that Congress could not effectively preempt the States' traditional authority to regulate indirect sources of air pollution unless it used clear language to that effect.").

The POLB does not acknowledge the EPA's reliance on the legal analysis from the State Attorney General's Office or address the rationale presented therein for the conclusion that the mitigation fee is not an unlawful tax under State law.⁵³

POLB Comment #7: The POLB asserts that sources controlled by SCAQMD Rule 2305 will be, and are, controlled by rules adopted by other agencies. To support this assertion, the POLB notes that emissions from heavy-duty trucks are currently heavily regulated by CARB. In addition, the POLB states that a newly-adopted CARB regulation, the Advanced Clean Fleets Regulation, will result in the turnover of trucks with combustion engines to trucks with zero emissions powertrains throughout the State. Trucks traveling between warehouses, ports, or intermodal railyards (such as drayage trucks) must be retired once they meet their statutory life beginning on January 1, 2025, and all drayage trucks must be ZE by 2035. Non-drayage trucks maybe covered by the High Priority Fleets portion of the regulation that results in the transition to ZE fleet by 2042. The Advanced Clean Fleet Regulation will result in a transformational shift in the on-road transportation sector towards zero emission by 2036.

EPA Response to POLB Comment #7: SCAQMD Rule 2305 applies to owners and operators of warehouses located in the SCAQMD with greater than 100,000 square feet of indoor floor space in a single building and who operate at least 50,000 square feet of the warehouse for warehousing activities. Thus, contrary to POLB's assertions, the sources controlled by SCAQMD Rule 2305, *i.e.*, warehouses, are not the sources controlled by CARB or district regulations referred to by the commenter. The EPA does recognize that CARB has adopted regulations that establish emission limits and other requirements related to control of emissions from new heavy-duty trucks, including CARB's Advanced Clean Fleets Regulation. In developing SCAQMD Rule 2305, the SCAQMD was also aware of CARB's regulatory efforts and designed Rule 2305 to enhance those efforts by accelerating emission reductions in the South Coast Air Basin

that would otherwise occur over a longer period under CARB's rules. SCAQMD Rule 2305 focuses the reductions in areas disproportionately affected by emissions from indirect sources associated with warehouses. In addition, the SCAQMD adopted Rule 2305 to fulfill a commitment in the 2016 South Coast AQMP to assess and identify actions to further reduce emissions associated with emission sources operating in and out of warehouse distribution centers.

The EPA understands the POLB's comment to imply that SCAQMD Rule 2305 is unnecessary given the rules adopted by other agencies that will result, over time, in reductions in emissions from heavy-duty trucks. However, the SCAQMD adopted Rule 2305 to accelerate the emissions reductions within the District to focus the reductions in the areas most affected by indirect source emissions associated with warehouses and to fulfill a commitment made by the SCAQMD in connection with the 2016 South Coast AQMP. Finally, the EPA notes that CAA section 110(a)(5) provides States with specific authority to adopt ISR rules that by design provide another means to achieve greater emission reductions, notwithstanding that there may be other regulatory requirements applicable to the mobile sources that are associated with the regulated entities under such an ISR rule. In this instance, the SCAQMD has availed itself of this authority and made the policy choice to adopt and implement a warehouse ISR rule.

POLB Comment #8: The commenter states that the EPA's finding that Rule 2305 is not fully enforceable, without SIP credit, undermines the purpose of the rule to assist in meeting the State and Federal air quality standards for ozone and PM_{2.5}.

EPA Response to POLB Comment #8: The EPA disagrees that the determination that Rule 2305 is not fully enforceable due to certain deficiencies undermines the purpose of SCAQMD Rule 2305. The stated purpose of SCAQMD Rule 2305 is to reduce local and regional emissions of NO_x and PM_{2.5}, and to facilitate local and regional emission reductions associated with warehouses and the mobile sources attracted to warehouses, in order to assist in meeting State and Federal air quality standards for ozone and PM_{2.5}.⁵⁴ The issue of whether SCAQMD Rule 2305 qualifies at the present time for SIP credit through approval by EPA of a specific amount of emissions reductions attributable to the

rule is different from whether SCAQMD Rule 2305 assists in meeting State ambient air quality standards and the NAAQS for ozone and PM_{2.5}.

As explained in the proposed rule, the EPA has concluded that SCAQMD Rule 2305 is generally enforceable for the purposes of CAA section 110(a)(2)(A), but with certain deficiencies that prevent the EPA from approving a specific amount of emissions reductions from the rule in any attainment or rate of progress/reasonable further progress demonstrations.⁵⁵ Although the EPA is not crediting Rule 2305 with achieving a specific amount of emissions reductions at this time, the EPA's evaluation of Rule 2305 indicates that the rule will in fact achieve additional emission reductions that are needed in the area for purposes of the ozone and PM_{2.5} NAAQS.⁵⁶ The EPA noted that these additional reductions will incrementally contribute to the overall reductions needed to attain the NAAQS in the South Coast Air Basin and Coachella Valley air quality planning areas. The EPA also anticipates that SCAQMD will take action to resolve the identified deficiencies in Rule 2305 so that the EPA may provide SIP credit for it.

C. A4A Comments and EPA Responses

A4A Comment #1: Citing the proposed approval of Rule 2305 and a news release issued at the time the proposal was signed, A4A expresses concern that the EPA may have predetermined the outcome of its proposed action on SCAQMD Rule 2305 before considering public comments. A4A asserts that the EPA must follow due process and the law by meaningfully considering the comments it receives—including the arguments as to which Federal law preempts Rule 2305.

EPA Response to A4A Comment #1: The EPA disagrees that the news release cited by the commenter indicated that the Agency had predetermined the outcome of this rulemaking.⁵⁷ A proper reading of the entire statement by the Region IX Regional Administrator reveals only her recognition of the need for additional emissions reductions in the South Coast Air Basin and Coachella Valley, especially in communities with minority populations and low-income populations that continue to experience relatively higher concentrations of pollutants. The statement does not

Department of Justice, to Ellen Peter, Chief Counsel, CARB, included as an enclosure to a letter dated May 6, 2021 from Ellen M. Peter, to Wayne Nastri, Executive Officer, SCAQMD, pp. 12–14.

⁵³ As noted previously in this document, in the *CTA v. SCAQMD* case, the Court dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaints. The State law claims that were dismissed include claims that Rule 2305 mitigation fees constituted an unlawful tax under State law.

⁵⁴ SCAQMD Rule 2305(a).

⁵⁵ 88 FR 70616, 70623, 70625.

⁵⁶ 88 FR 70616, 70624.

⁵⁷ EPA Region IX, New Release titled "EPA Proposes Approval of Groundbreaking Rule to Reduce Southern California Air Pollution Driven by Warehouse Operations," October 12, 2023.

suggest that the EPA would approve Rule 2305 regardless of the comments submitted in response to our proposed approval, and in a later paragraph, the news release notes that “if finalized as proposed,” Rule 2305 will become federally enforceable. The phrase “if finalized as proposed” conveys the possibility that the EPA may not finalize approval, as proposed, for example, in response to adverse comments the Agency receives on the proposal. Moreover, the EPA has fully evaluated the comments submitted on the proposed action and taken those into account, as evidenced in this final rule.

A4A Comment #2: The A4A conveys concern that the EPA has proposed to find that SCAQMD Rule 2305 is not preempted under the CAA, ADA and FAAAA notwithstanding an ongoing legal challenge to Rule 2305 grounded in preemption claims under those same statutes. The A4A is also concerned about the EPA’s statements regarding possible actions the Agency might or might not take in the wake of a decision in the litigation finding Rule 2305 to be preempted but issued after final EPA approval of the rule.

EPA Response to A4A Comment #2: The EPA disagrees with the commenter’s characterization of the Agency’s evaluation of the SCAQMD’s authority to adopt Rule 2305 and the Agency’s evaluation of its own obligations to consider SCAQMD’s authority in accordance with CAA section 110(a)(2)(E). The EPA fully considered these questions as explained in the proposal notice for this action. The commenter also took issue with the EPA’s acknowledgement of the then ongoing litigation concerning claims of preemption and in particular with the EPA’s statements that were the court to conclude that SCAQMD was preempted or otherwise precluded from adopting or implementing Rule 2305 the Agency would take that into account as appropriate. This did not indicate that the EPA was “rendering a verdict without a record.” This reflected a frank acknowledgement that a court decision contrary to the EPA’s own analysis would of course require the agency to revisit that issue, as appropriate.

More importantly, as noted previously, since publication of the proposed rule, the U.S. District Court has addressed the challenges to the SCAQMD’s legal authority to enforce Rule 2305, that were brought by CTA and A4A and that are grounded in preemption under the CAA, ADA, and the FAAAA, and dismissed on the merits the claims brought under those

statutes.⁵⁸ Neither CTA nor A4A have filed a notice of appeal.⁵⁹ The EPA has taken the Court’s decision into account in this final rule, and because we are taking final action after resolution of the legal challenges, the A4A’s comment concerning actions that the EPA might or might not take if the decision were to be issued after final EPA action on Rule 2305 is moot.

A4A Comment #3: The A4A contends that the ADA preempts Rule 2305 because Rule 2305 impacts the price, route, or service of air carriers and that its ADA arguments apply equally to the FAAAA. To support these contentions, the A4A presents a review of relevant case law and its evaluation of Rule 2305 in light of the law and relevant case holdings. Further, the A4A objects to the EPA’s preliminary conclusion to the contrary to be superficial and unsubstantiated.

EPA Response to A4A Comment #3: The EPA disagrees that the ADA or the FAAAA preempt Rule 2305. In the proposed rule, the EPA indicated that we do not consider the requirements under Rule 2305 as relating directly to the “price, route, or service” of any air carrier or common carrier. But we recognized that an indirect effect on price is a foreseeable consequence of the additional costs borne by warehouse owners or operators to comply with the annual WPCO.⁶⁰ We preliminarily concluded that Rule 2305 is not preempted under either the ADA or F4A because any price effect is indirect and remote. Our preliminary conclusion in this regard was based on our review of the SCAQMD’s Final Staff Report for Rule 2305, which was included in the SIP submission and includes the SCAQMD’s responses to comments submitted during the District’s rulemaking process that raise preemption objections to Rule 2305 under the ADA and FAAAA, and the filings in the *CTA v. SCAQMD* case. Moreover, we took into consideration that, in adopting Rule 2305, the District is acting under its delegated police powers to protect public health in a way that is explicitly authorized under CAA section 110(a)(5) and CAA section 116, and that acting in that capacity weighs

against a finding of preemption under the ADA and FAAAA.

In the *CTA v. SCAQMD* case, the Court considered the same arguments related to ADA and FAAAA preemption that A4A includes in its comments on our proposed rule. After considering the arguments and related case law, the Court observed that Rule 2305 contains no express reference to the services, rates, or routes of air carriers and is thus not expressly preempted. The Court concluded that the A4A had not shown that the effect of Rule 2305 on the integrated air delivery system is more than “tenuous, remote and peripheral.”⁶¹

To reach this conclusion, the Court considered the general applicability of Rule 2305. The court noted that Rule 2305 “operate[s] one or more steps away from the moment at which the firm offers its customer a service for a particular price;”⁶² does not affect any air carrier’s routes because it treats all truck visits the same, no matter which course of travel the air carrier chooses for these trucks; does not bind an air carrier to offer particular services and does not control the prices, schedules, origins and destinations offered by air carriers to their customers beyond affecting the compliance costs of those air carriers.⁶³ Lastly, the Court noted that the ADA and FAAAA were enacted to ensure that airlines would be operated as private businesses rather than public utilities and that A4A had made no showing that Rule 2305 would materially alter this plan.⁶⁴

For this final rule, we have reviewed the decision⁶⁵ of the District Court and find that it supports our preliminary conclusion set forth in the proposed rule that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAAA for the purposes of CAA section 110(a)(2)(E). Moreover, we are aware of no other legal challenge to Rule 2305 that might prevent SCAQMD from carrying out Rule 2305. Lastly, we note that we consulted with the U.S. Department of Transportation on our responses to comments related to ADA

⁵⁸ *CTA v. SCAQMD*, Judgment, Dkt. 168, January 18, 2024. In addition, the Court dismissed with prejudice CTA’s and A4A’s remaining State law claims that had been included in the complaints—see *CTA v. SCAQMD*, Order Re Joint Stipulation and Consent Motion to Dismiss with Prejudice (Dkt. 166), Dkt. 167, January 18, 2024.

⁵⁹ *CTA v. SCAQMD*, Defendants’ Request for Publication of Order Denying Plaintiff and Plaintiff-Intervenor’s Motions for Summary Judgment, Dkt. 169, March 5, 2024.

⁶⁰ 88 FR 70616, 70623.

⁶¹ *CTA v. SCAQMD*, Order Re: Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America’s Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023, p. 33.

⁶² *Id.*, citing *S.C. Johnson & Son, Inc. v. Transp. Corp. of America, Inc.*, 697 F.3d 544, 558 (7th Cir. 2012).

⁶³ *Id.*, p. 33.

⁶⁴ *Id.*, p. 34.

⁶⁵ *CTA v. SCAQMD*, Order Re: Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America’s Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023), pp. 29–34.

and FAAAA preemption in this final rule. Therefore, the EPA affirms in this final rule the conclusion that the SCAQMD is not prohibited from implementing Rule 2305 under the ADA or FAAA and concludes that neither the ADA nor the FAAAA present an obstacle to the District in carrying out Rule 2305 for the purposes of CAA section 110(a)(2)(E).

A4A Comment #4: Citing statements by the District, A4A asserts that, in adopting Rule 2305, the SCAQMD is seeking to regulate diesel truck emissions.

EPA Response to A4A Comment #4: The EPA presumes A4A's comment is intended to imply that the District's true purpose in adopting Rule 2305 is to adopt and enforce vehicle standards that are preempted under CAA section 209(a). The EPA disagrees and finds that Rule 2305 is structured as a valid ISR rule that involves a facility-by-facility review and that takes a site-based approach to encourage and incentivize actions to reduce emissions associated with warehouse operations. Those actions may include reducing truck-related emissions, or emissions from other sources, that are associated with warehouse operations but does not constitute a mandate for purchase of ZE or NZE trucks (see EPA Response to POLB Comment #2).

The EPA further notes that States retain significant authority under the Clean Air Act to regulate emissions associated with mobile sources, notwithstanding the CAA Title II preemption provisions. In addition to the indirect source review programs described in section 110(a)(5), the Act also identifies various other ways in which States can address and reduce mobile source emissions, such as transportation control measures, vehicle inspection and maintenance programs, in-use regulations, and emission standards.⁶⁶

A4A Comment #5: The A4A states that the EPA should reject SCAQMD's attempt to regulate vehicle emissions standards and decline to open the door to a patchwork of local restrictions that Congress intended to avoid in enacting the CAA's mobile source provisions.

EPA Response to A4A Comment #5: The EPA acknowledges that, in enacting section 209 of the CAA, Congress intended to avoid a patchwork of different State and local emissions standards for new vehicles and new vehicle engines that manufacturers would be required to meet. However, the EPA does not agree that, in Rule 2305, the SCAQMD has adopted or

attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines or from any nonroad vehicles or engines preempted by CAA sections 209(a) and 209(e) because, among other things, Rule 2305 does not apply to vehicle or engine manufacturers but, rather, to warehouse owners and operators. Moreover, warehouse owners or operators may comply with Rule 2305 through a variety of measures, not just through purchase of a ZE or NZE vehicle (also see EPA Response to POLB Comment #2). Thus, we do not believe that approval by the EPA of Rule 2305 as part of the California SIP will open the door to the patchwork of local vehicle or engine standards that Congress intended to avoid in enacting the mobile source provisions of the CAA. Moreover, we believe that ISR programs described in CAA section 110(a)(5) represent an important tool for the States and local air districts to address air quality problems, that the CAA preemption provisions under CAA section 209 should be read together with the ISR provisions in CAA section 110, and that, read together, CAA section 209 does not necessarily preempt ISR programs that address emissions from mobile sources that are attracted to an indirect source.

By contrast, the EPA notes that States have considerable discretion to adopt and submit SIP provisions to the EPA for evaluation and, if approved, inclusion into that State's SIP. So long as the State has met all applicable statutory and regulatory requirements, the EPA will approve those provisions into the SIP in accordance with CAA section 110(k) and other applicable requirements. Among the approaches that a State has authority to elect to adopt is an ISR as contemplated in CAA section 110(a)(5). The mere fact that only some States may elect to adopt such a SIP provision, while others do not, also does not create an impermissible "patchwork" of requirements. It is a hallmark of the SIP program that States may follow different approaches to attaining and maintaining the NAAQS based on local facts and circumstances, so long as they meet applicable SIP requirements.

A4A Comment #6: The A4A contends that SCAQMD Rule 2305 creates incentives sufficiently burdensome as to be, in effect, a purchase mandate and is thus, under the reasoning of *Engine Mfrs. Ass'n v. SCAQMD*,⁶⁷ a mobile

source emissions standard preempted under CAA section 209. The A4A acknowledges the decision in *NAHB v. SJVUAPCD* upholding an ISR rule against a CAA preemption challenge but distinguishes SCAQMD Rule 2305 from the SJVUAPCD ISR rule on three grounds. First, A4A cites language from the *NAHB* decision that "[a]n emissions limit calculated by reference to a fleet of engines or vehicles is as much a 'standard' as an emissions limit calculated by reference to an individual engine or vehicle," and argues that Rule 2305, as a "fleet" standard rather than an ISR rule, is preempted under the CAA. Second, A4A asserts that Rule 2305 is distinguishable because it mandates ZEV equipment or imposes penalties if ZEV equipment is not used. Third, A4A asserts that Rule 2305 is distinguishable because it does not allow regulated entities to retrofit existing equipment or switch fuels to achieve compliance, based upon which A4A further asserts "the only way to avoid punitive mitigation fees is to purchase ZEV/NZE vehicles."

EPA Response to A4A Comment #6: In the EPA's proposed rule, we considered the issue of whether Rule 2305, while structured as an ISR program, represents a de facto purchase mandate for ZE or NZE trucks and is thus preempted under CAA section 209(a) under the principles of the *EMA* case.⁶⁸ As explained in the proposed rule, we found that Rule 2305 lacks the indicia of a de facto regulation of either motor vehicles or nonroad vehicles or engines.⁶⁹ In support of this preliminary finding, we noted the various options available (WAIRE Menu, Custom WAIRE Plan, or Mitigation Fee) to warehouse operators that do not involve acquisition of, or contracting for, ZE or NZE trucks to earn WAIRE Points. The EPA acknowledged in the proposed rule information from the SCAQMD's final socioeconomic impact assessment for Rule 2305 that ZE/NZE non-acquisition (or contracting) scenarios are generally 4 to 5 times more costly (in terms of average annual dollars per square foot) than the ZE/NZE acquisition (or contracting) scenarios so as to incentivize acquisition and use of ZE/NZE trucks over the non-acquisition options.⁷⁰ However, we also noted that the scenarios in the socioeconomic impact assessment were developed to identify the widest range of possible costs assuming that warehouse owners and operators would only comply with a single scenario approach from 2022

⁶⁷ *Engine Manufacturers Association v. South Coast Air Quality Management District*, 541 U.S. 246, 253–55 (2004) ("*EMA*").

⁶⁸ 88 FR 70616, 70622–70623.

⁶⁹ 88 FR 70616, 70623.

⁷⁰ 88 FR 70616, 70623, footnote #55.

⁶⁶ See, e.g. CAA sections 108(f), 177, 182, 209.

through 2031. As a practical matter, the EPA expects warehouse operators will select multiple points-earning actions or investments along with mitigation fees to meet the annual compliance obligation. Recent data on compliance with Rule 2305 bears out this expectation. For Year 2023, for example, warehouse operators reported WAIRE Points primarily from hostler usage (53%), solar panel installation and usage (15%), and NZE truck usage (14%). Mitigation fee point purchases represented approximately 2% of the total reported WAIRE Points for 2023.⁷¹ Moreover, these selections may change over the years in light of the ever-changing circumstances of individual businesses and the composition of vehicle fleets. As such, we find that Rule 2305 is not a de facto purchase mandate and is thus not preempted under CAA section 209(a) consistent with the *EMA* case.

As part of our evaluation of this issue, we also compared Rule 2305 to SJVUAPCD Rule 9510, the ISR rule at issue in the *NAHB v. SJVUAPCD* case (i.e., SJVUAPCD Rule 9510), and preliminarily found that Rule 2305 is similar in relevant respects to the ISR program the Court determined in *NAHB* was not preempted.

Most critically, we noted that Rule 2305 regulates at the level of the indirect source, not at the level of mobile sources the indirect source may attract. In Rule 2305, the annual compliance obligation for any particular warehouse operator reflects the number and type of truck trips visiting the warehouse. It is reasonable to assume that other non-truck mobile sources attracted to or associated with the warehouse would be proportional to the number of truck trips. Therefore, the use of trucks trips in Rule 2305 as a proxy for all attracted mobile sources means that, contrary to the A4A's contention otherwise, Rule 2305 is premised on a facility-by-facility review of all "attracted" sources. This site-based approach to regulating emissions is precisely what allows Rule 2305 to avoid preemption under section 209(a) just as SJVUAPCD Rule 9510 avoids preemption under CAA section 209(e)(2).

A4A claims that the annual compliance obligation under Rule 2305 (the WATT) represents a "fleet" standard under the CAA. However, the WATT is a facility-based metric in that it reflects truck visits to or from a warehouse and is a proxy for all mobile source emissions associated with

warehouse operations. The truck visits to or from a warehouse do not represent the type of fleet that is implicated by CAA section 209. Fleet-based standards that may be subject to CAA section 209 preemption relate to vehicle manufacturers, owners, or purchasers, not to operators or owners of facilities to which vehicles are attracted. The same was true for the SJVUAPCD rule at issue in *NAHB v. SJVUAPCD*.⁷²

With respect to A4A's assertion that Rule 2305 is distinguishable from Rule 9510 because it mandates ZEV equipment or imposes penalties if ZEV equipment is not used, as further explained above, Rule 2305 does not mandate ZEV equipment or impose penalties if ZEV equipment is not used. Rather, Rule 2305 provides warehouse operators (and owners who opt in) various options (WAIRE Menu, Custom WAIRE Plan) for compliance that do not involve acquisition of, or contracting for, ZE or NZE trucks or paying the mitigation fee.

We also disagree with A4A's assertion that Rule 2305 does not allow regulated entities to retrofit existing equipment or switch fuels to achieve compliance. These specific types of actions could be used to earn WAIRE points under a Custom WAIRE Plan under Rule 2305 if they meet the requirements for such actions under SCAQMD Rule 2305(d)(4). These compliance options, as well as others described herein, refute A4A's contention that the only options for compliance are payment of mitigation fees or purchase of ZEV/NZV vehicles.

Lastly, we note that the Court in *CTA v. SCAQMD* considered but rejected arguments that Rule 2305 is preempted because it relates to the control of emissions from vehicles and engines and is a "standard" because its purpose and effect is to mandate the purchase of ZE and NZE trucks.⁷³ The Court also

determined that neither the purpose nor the effect of Rule 2305 is to compel the purchase of ZE or NZE.⁷⁴ As such, we find the Court's decision as supportive of our preliminary conclusion in the proposed rule that, in Rule 2305, the SCAQMD has not adopted or attempted to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines preempted by CAA section 209(a). We affirm that conclusion in this final action.

A4A Comment #7: The A4A asserts that the CAA only permits the EPA to approve into SIPs ISR rules that apply to new or modified sources, not existing sources. In support of this assertion, the A4A contends, based on statements by the EPA published in 1973, that the EPA has historically interpreted ISR rules to refer to new or modified sources, rather than existing sources. The A4A also asserts that State law (i.e. California Health & Safety Code section 40440) limits the SCAQMD's authority with respect to ISR rules to new or modified sources, and that State law preempts Rule 2305 because it constitutes a land use restriction. Lastly, the A4A asserts that CAA section 110 limits the EPA's authority to approve ISRs only to the extent they regulate new or modified, and not existing, facilities.

EPA Response to A4A Comment #7: First, we disagree that ISR programs as described in CAA section 110(a)(5) apply to new or modified sources exclusively and not to existing sources. Please see EPA Response to POLB Comment #3. Moreover, the statements made by the EPA in 1973 to which the A4A refers, come from a proposed rule in which the EPA proposes certain amendments to the EPA's regulations establishing SIP content requirements that "would require, with respect not only to 'stationary sources,' in the traditional sense, but also certain other types of facilities, an assessment of both direct and indirect effects on air quality prior to their construction and

Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023, p. 24.

⁷⁴ As to effects, the court notes that the District presented evidence that warehouses would not have to shutter their operations or relocate unless compliance costs exceeded approximately \$1.50 per square foot per year, leading the court to observe: "That none of the models predicted compliance costs exceeding that amount, suggests that the effects of the Rule were not sufficient to compel warehouse owners to purchase ZE or NZE trucks. Also, for a typical, 500,000 square foot warehouse, the compliance costs would be 0.5% on the low end to 3.2% on the high end of the warehouse's existing annual operating costs. Dkt. 107-3 ¶ 135. These amounts are quite small, and do not show that the District has provided warehouse operators with a demand to purchase ZE or NZE trucks that cannot practically be refused." Id., p. 26.

⁷¹ See SCAQMD, Hybrid Mobile Source Committee Meeting, Agenda, March 15, 2024, p. 18.

⁷² See *NAHB v. SJVUAPCD*, 627 F.3d 730 at 740 (9th Cir. 2010) ("We agree that Rule 9510 escapes preemption not merely because Rule 9510 affects groups of construction equipment rather than individual engines or vehicles. An emissions limit calculated by reference to a fleet of engines or vehicles is as much a "standard" as an emissions limit calculated by reference to an individual engine or vehicle. Rather, Rule 9510 escapes preemption because its regulation of construction equipment is indirect. Rule 9510 does not measure emissions by fleets or groups of vehicles; it measures emissions on a "facility-by-facility" basis. 42 U.S.C. 7410(a)(5)(D). Its unit of measurement is the indirect source, not the fleet. It regulates development sites directly, but as the term "indirect source" implies, it regulates mobile emissions only indirectly. For that reason, the fleet-based regulations are not analogous to Rule 9510.")

⁷³ *CTA v. SCAQMD*, Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's

modification and a determination as to whether there would be interference with maintenance of any national standard.”⁷⁵ In other words, the statements by the EPA in 1973 describe amendments that the Agency was proposing to extend certain SIP requirements with respect to new source review to certain indirect sources, but they do not speak to the issue of State authority to regulate existing indirect sources nor do they establish a long-standing interpretation by the EPA that ISR programs refer exclusively to new or modified indirect sources. Further, the 1973 statements preceded Congress’s enactment of the indirect source provisions in section 110(a)(5) in 1977. The commenter fails to explain with specificity why a prior agency statement on a different topic governs the interpretation of a subsequently enacted statute.

Second, the EPA disagrees that SCAQMD Rule 2305 is unenforceable under State law. In the EPA’s proposed rule, we considered the question of the SCAQMD’s authority to adopt Rule 2305 and preliminarily concluded that SCAQMD has the authority to adopt the rule under California Health & Safety Code section 40440. This authorizes the SCAQMD to provide for indirect source controls in those areas of the District in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin.

In its Final Staff Report, the SCAQMD presents information concerning high-level, localized concentrations of air pollutants in the vicinities of warehouses.⁷⁶ Such information provides support for the SCAQMD’s authority to adopt Rule 2305 under California Health & Safety Code section 40440. The A4A cites the same section of California code as disallowing Rule 2305, but the A4A focuses solely on the second part of the authority granted in section 40440, which refers to new sources, whereas the statute provides two different bases for the authority, either of which is sufficient, and the EPA has simply relied on the first one, which does not distinguish between new or existing sources.

Third, as to the A4A’s claim that SCAQMD Rule 2305 constitutes an unlawful land use restriction under State law, we note that the SCAQMD responded to similar comments made during the District’s rulemaking process. In its response to comments, the SCAQMD explained that Rule 2305

“does nothing to interfere with local governments’ ability allow, disallow, or control the use of land for warehouse purposes or dictate where warehouses may be built. Like every other air district rule, it merely limits emissions from particular sources—here, indirect sources.”⁷⁷ The A4A points to the truck-trip-based compliance obligation and the options set forth in Rule 2305 (e.g., installation of changing equipment, solar panel systems, and use of such systems) to meet the obligation as ostensible evidence of the land use regulation character of Rule 2305. However, the A4A does not explain how the compliance obligation or the options for compliance set forth in the rule could interfere with local governments’ ability to control land use for warehouse purposes or dictate where warehouses may be built.

Fourth, in the proposed rule, the EPA preliminarily concluded that the District’s decision to regulate both existing and new warehouses in Rule 2305 is consistent with CAA section 110(a)(5). As explained in the proposal, we considered this question in light of the definitions of the term “indirect source review program” in CAA section 110(a)(5)(D) and “indirect source” in CAA section 110(a)(5)(C) and in light of CAA section 116, which explicitly provides that States retain authority to regulate more stringently in SIP provisions than otherwise required by Federal law, except where preempted from doing so.⁷⁸ The A4A disagrees with EPA’s interpretation but did not provide a persuasive explanation based on the statutory language.

Lastly, we note that the Court in *CTA v. SCAQMD* also considered this issue and found that “Nothing in the text, structure, or purpose of the indirect-source-review provision suggests that this phrase limits indirect source reviews to those based on new and modified indirect sources.”⁷⁹ The EPA has reached this same conclusion based on the text, structure, and purpose of CAA section 110(a)(5), and thus the court decision confirms the agency’s own view.

In this final rule, for the reasons given in our proposed rule and in light of the Court’s decision, the EPA affirms our

conclusion that the District’s choice to regulate both existing and new warehouses in Rule 2305 is consistent with CAA section 110(a)(5).

A4A Comment #8: Citing CAA sections 110(a)(5)(B) and 110(c), the A4A asserts that the CAA authorizes only the EPA, and not the States, to adopt airport-related ISRs. As such, the A4A contends that Rule 2305 cannot regulate airport-based warehouses. Further, because the preemption principles of the ADA extend to an air carrier’s trucking operations, A4A contends that the prohibition on States’ authority to adopt airport-related ISRs extends to all airport-related warehouses.

EPA Response to A4A Comment #8: CAA section 110(a)(5)(B) narrows the authority that the EPA would otherwise have to promulgate ISR programs as part of a Federal Implementation Plan (FIP) under CAA section 110(c) to a specific set of indirect sources, namely “only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.” The use of the word “only” in CAA section 110(a)(5)(B) refers to the types of indirect sources over which the EPA retains authority when promulgating a FIP and simply does not address what sources States may elect to regulate in an ISR. CAA section 110(a)(5)(B) does not speak to any limits on States in developing ISRs and thus it does not present an obstacle to the SCAQMD’s legal authority to carry out Rule 2305 throughout the District or to the EPA’s approval of the rule as consistent with the requirements of CAA section 110(a)(2)(E). Lastly, because the commenter’s premise is not supported by the CAA, the commenter’s extension of the premise to airport-related warehouses (i.e., those physically located off-airport) is also not supported.

D. BAR Logistics Comments and EPA Responses

BAR Logistics Comment #1: BAR Logistics contends that enforcement of Rule 2305 is premature at this point in time because of the relative unavailability of Class 8 electric trucks.

EPA Response to BAR Logistics Comment #1: In reviewing SIP submissions, the EPA’s role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for

⁷⁷ SCAQMD, Final Staff Report, Supplement to Agenda Item #27, Board Meeting of May 7, 2021, Supplement Number Two-Response to Letter from Airlines for America, dated May 4, 2021 (Attachment A).

⁷⁸ 88 FR 70616, 70622.

⁷⁹ *CTA v. SCAQMD*, Order Re: Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America’s Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023, p. 28.

⁷⁵ 38 FR 9599 (April 18, 1973).

⁷⁶ SCAQMD, Final Staff Report, pp. 16–17.

EPA disapproval of a rule submitted by a State as part of a SIP.⁸⁰

The EPA acknowledges the challenges for warehouse operators in meeting the requirements of Rule 2305. The EPA notes that warehouse operators have three basic options, or any combination of these options, through which to earn or obtain points sufficient to meet their WPCO and that all these options provide for points to be earned toward the WPCO from actions that do not involve ZE/NZE trucks. With respect to ZE/NZE trucks, in response to comments on proposed Rule 2305, the SCAQMD indicated that there are commercially available, or expected to be available, options to acquire or use ZE/NZE trucks within the first compliance year.⁸¹ At the time of adoption of Rule 2305, the SCAQMD had funded over 1,200 NZE trucks that are currently operating in the commercial sector.⁸² The SCAQMD also noted that NZE engines are available in two sizes, 8.9 and 11.9 liters, and are offered by major truck manufacturers in different truck classes including Class 8 long haul and/or drayage trucks. The ZE truck market is still growing with many major manufacturers announcing plans for commercialization of battery-electric and hydrogen fuel cell electric trucks.⁸³ SCAQMD further noted that there are expected to be 62 models of medium duty (e.g., Class 4–7) ZE trucks commercially available during 2021.⁸⁴

BAR Logistics Comment #2: As a third-party logistics (3PL) warehouse operator, BAR Logistics asserts that the company owns no trucks, and, thus, mitigation options under SCAQMD Rule 2305 are extremely limited. BAR Logistics further contends that, as to 3PLs, the mitigation fee functions as a tax and is unfairly imposed on 3PLs because companies with much greater resources and with trucks that transport goods to and from the warehouse are not subject to the requirements of Rule 2305. BAR Logistics states that the tax 3PLs will pay will go to larger companies from the WAIRE program, resulting in a “regressive tax.”

EPA Response to BAR Logistics Comment #2: As noted in EPA Response to BAR Logistics Comment #1, in reviewing SIP submissions, the EPA’s

role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.⁸⁵

The EPA acknowledges the challenges for warehouse operators in meeting the requirements of Rule 2305 but notes that warehouse operators have options, as explained above, to earn or obtain WAIRE points to meet their WPCO from actions that do not involve ZE/NZE trucks.

In addition, the EPA notes that, based on the SCAQMD’s first Annual Report for the WAIRE Program, warehouse operators intend to meet their obligations under Rule 2305 in various ways with only limited reliance on the mitigation fee option. As described in the proposed rule, the first Annual Report suggests that warehouse operators expect to meet their WPCOs, at least in the early years of the program, primarily through ZE hostler usage, (i.e., yard tractors that move trailers and containers around warehouse facilities; approximately 40% of the anticipated WAIRE points based on the Initial Site Information Report (ISIRs) received), NZE Class 8 Truck Visits (approximately 27%), and ZE hostler acquisition (approximately 8%).⁸⁶ The submitted ISIRs also suggest that, in addition to taking actions from the WAIRE Menu, warehouse operators anticipate earning about 5,500 points through mitigation fees, representing about 3% of total points earned, of about \$5.5 million.⁸⁷ More recent data shows that, for Year 2023, warehouse operators reported WAIRE Points primarily from hostler usage (53%), solar panel installation and usage (15%), and NZE truck usage (14%).⁸⁸

E. CTA Comments and EPA Responses

CTA Comment #1: The CTA asserts that the EPA should defer action on Rule 2305 until Federal court examinations of SCAQMD legal authority are complete and resolved.

EPA Response to CTA Comment #1: Please see EPA Response to POLB Comment #1.

CTA Comment #2: The CTA contends that Rule 2305 is preempted by CAA section 209 because it establishes de facto emission standards for trucks because it is structured so as to make the acquisition of trucks that meet only certain emissions standards, and their associated infrastructure that is necessitated by truck acquisition, the only economically reasonable and the principal method of compliance.

EPA Response to CTA Comment #2: The EPA disagrees that Rule 2305 establishes de facto emissions standards for trucks. Please see EPA Response to POLB Comment #2 and EPA Response to A4A Comment #6.

CTA Comment #3: The CTA contends that Rule 2305 is preempted by the ADA and the FAAAA because it will mandate changes to prices, routes, and services. The CTA states that the EPA has no basis or expertise upon which to rely with regard to either the interpretation or application of the ADA or the FAAAA and that the best source of definitive interpretation of the application of these Federal statutes is a Federal court. The CTA also contends that the EPA should have published a specific supplemental notice seeking additional public input on these specific questions for which it has no legal expertise.

EPA Response to CTA Comment #3: The EPA disagrees that Rule 2305 is preempted by the ADA or the FAAAA. Please see the EPA Responses to POLB Comment #4 and A4A Comment #3. We also note that we consulted with the U.S. Department of Transportation on our responses to comments related to ADA and FAAAA preemption in this final rule.

In our proposed rule, the EPA noted that we did not consider the requirements under Rule 2305 as relating directly to the price, route, or service of any air carrier or common carrier but recognized that an indirect effect on price is a foreseeable consequence of the additional costs borne by warehouse owners or operators to comply with the annual WPCO.⁸⁹ Since publication of the proposed rule, the Court in the *CTA v. SCAQMD* case has concluded that Rule 2305 is not preempted under the ADA or the FAAAA, in part, based on the Court’s finding that the challengers to Rule 2305 had failed to show that the effect of the Rule 2305 on price, route or service of any air carrier “is more than tenuous, remote and peripheral.”⁹⁰ In light of the

⁸⁰ *Union Electric Company v. EPA*; 427 U.S. 246, 265 (1976).

⁸¹ SCAQMD, Final Staff Report, “Proposed Rule 2305—Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316—Fees for Rule 2305”, May 2021, “SCAQMD Final Staff Report”, Appendix F, Master Response 2d.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Union Electric Company v. EPA*; 427 U.S. 246, 265 (1976).

⁸⁶ 88 FR 70616, 70619, citing information from SCAQMD, Annual Report for the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program, January 2023, p. 15.

⁸⁷ *Id.*

⁸⁸ SCAQMD, Hybrid Mobile Source Committee Meeting, Agenda, March 15, 2024, p. 18.

⁸⁹ 88 FR 70616, 70623.

⁹⁰ *CTA v. SCAQMD*, Order Re: Plaintiff’s Motion for Summary Judgment as to Plaintiff’s Complaint

Court's decision, the EPA affirms our preliminary conclusion that SCAQMD Rule 2305 is not preempted by the ADA or the FAAAA. Therefore, the SCAQMD is not prohibited under those statutes from carrying out Rule 2305, consistent with the SIP requirements under CAA section 110(a)(2)(E). Also, in light of the Court's decision, the EPA considers to be moot the CTA's suggestion to publish a supplemental notice to seek additional public input on whether Rule 2305 is preempted by the ADA or FAAAA.

CTA Comment #4: The CTA asserts that Rule 2305 is unenforceable under State law, rendering SIP inclusion fatal. The CTA claims that Rule 2305 imposes an unlawful tax under State law. The CTA objects to the EPA's reliance on legal analysis provided by the State Attorney General's office and asserts that such reliance is not a sufficient basis for SIP approval. The CTA also contends that SCAQMD has adopted a rule for which it does not have authority under State law⁹¹ because the rule applies to *new and existing* sources whereas the authority of SCAQMD to adopt ISR rules is limited to areas that have high-level, localized concentrations of pollutants or with respect to any *new* source that will have a significant effect on air quality in the South Coast Air Basin.

EPA Response to CTA Comment #4: The EPA disagrees that SCAQMD Rule 2305 is unenforceable under State law. In the EPA's proposed rule, we considered the question of the SCAQMD's authority to adopt Rule 2305 and preliminarily concluded that SCAQMD has the authority to adopt the rule under California Health & Safety Code section 40440.⁹² This section authorizes the SCAQMD to provide for indirect source controls in those areas of the South Coast District that have high-level, localized concentrations of pollutants or with respect to any new

source that will have a significant effect on air quality in the South Coast Air Basin.

In its Final Staff Report, the SCAQMD presents information concerning high-level, localized concentrations of air pollutants in the vicinities of warehouses.⁹³ Such information provides support for the SCAQMD's authority to adopt Rule 2305 under California Health & Safety Code section 40440. The CTA cites the same section of California code as disallowing Rule 2305. The CTA focuses solely on the second part of the authority granted in section 40440, which refers to new sources, whereas the statute provides two different bases for the authority, either of which is sufficient, and the EPA has simply relied on the first one, which does not distinguish between new or existing sources.

In the EPA's proposed rule, with respect to the issue of whether the mitigation fee in Rule 2305 constitutes an unlawful tax under State law, we acknowledged comments to that effect that were submitted in the District's rulemaking process but preliminarily found the mitigation fee under Rule 2305 to be lawful under State law on the basis of legal analysis provided by the State Attorney General's Office.⁹⁴ In the context of the EPA's actions on SIPs and SIP revisions, the EPA's reliance on interpretations of State law from a State's attorney general is generally appropriate given the role of a State Attorney General as the chief legal officer of the State. The EPA generally defers to interpretations of State law from State attorney generals in the absence of clear error where questions of State law arise in the context of SIP actions. We find no such error in the legal analysis provided by the State Attorney General's Office in this instance.

The CTA has pointed out no clear error in the legal analysis provided by the State Attorney General's Office but suggests that the EPA should view the analysis differently because the analysis was provided as advocacy and justification for the adoption of Rule 2305 and because CARB and the State of California have joined the *CTA v. SCAQMD* case as intervenors for the SCAQMD. However, the Attorney General's Office prepared the legal analysis at the request of CARB on behalf of the SCAQMD, which had

received a variety of questions concerning the legal authority of the SCAQMD to promulgate Rule 2305.⁹⁵ Given these circumstances, the legal analysis appears to us to be nothing more than a routine and appropriate response by the State Attorney General's Office to questions from State agencies concerning their authority under State law. The EPA also does not find CARB's and the State of California's subsequent participation in the *CTA v. SCAQMD* case as intervenors to defend the constitutionality of Rule 2305 to be relevant to our evaluation of Rule 2305 as a revision to the California SIP. As such, the EPA finds no basis to question the legal analysis prepared by the State Attorney General's Office. The EPA reaffirms our reliance on the State's analysis as the basis for our conclusion that the mitigation fee in Rule 2305 does not constitute an unlawful tax under State law. In addition, the SCAQMD is not prohibited under State law from carrying out Rule 2305, including its mitigation fee option, consistent with the SIP requirements under CAA section 110(a)(2)(E).⁹⁶

CTA Comment #5: The CTA contends that the EPA does not consistently and clearly define "Indirect Source Rule" applications. To support this contention, the CTA notes SCAQMD Rule 2305 is not a legitimate ISR rule if one relies on the ISR rule at issue in *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District (NAHB v. SJVUAPCD)*.⁹⁷ Among the differences between the two rules, the CTA asserts that the ISR rule at issue in *NAHB v. SJVUAPCD* applies only to new sources of emissions, rather than new and existing sources of emissions, and is concerned with the development site as a whole, rather than being engine- or vehicle-based. Also, the CTA finds inconsistencies between the approach to reducing emissions under SCAQMD Rule 2305 and the description of ISR rules by CARB (that is cited by the EPA in a separate rulemaking) as rules that "cap" emissions at an entire facility or otherwise seek to reduce emissions below a certain facility-wide level.

EPA Response to CTA Comment #5: The EPA approved SJVUAPCD Rule

for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023, p. 33.

⁹¹ The CTA cites California Health & Safety Code section 40440.

⁹² In relevant part, California Health & Safety Code section 40440 provides: "(a) The south coast district board shall adopt rules and regulations that carry out the plan and are not in conflict with State law and Federal laws and rules and regulations. Upon adoption and approval of subsequent revisions of the plan, these rules and regulations shall be amended, if necessary, to conform to the plan. (b) The rules and regulations adopted pursuant to subdivision (a) shall do all of the following: . . . (3) Consistent with Section 40414, provide for indirect source controls in those areas of the south coast district in which there are high-level, localized concentrations of pollutants or with respect to any new source that will have a significant effect on air quality in the South Coast Air Basin."

⁹³ SCAQMD, Final Staff Report, pp. 16–17.

⁹⁴ Letter dated May 6, 2021 from Robert Swanson, Deputy Attorney General, California Department of Justice, to Ellen Peter, Chief Counsel, CARB, included as an enclosure to a letter dated May 6, 2021 from Ellen M. Peter, to Wayne Nastri, Executive Officer, SCAQMD.

⁹⁵ Id.

⁹⁶ Also, as noted previously in this document, in the *CTA v. SCAQMD* case, the Court dismissed with prejudice CTA's and A4A's remaining State law claims that had been included in the complaints. The State law claims that were dismissed include claims that Rule 2305 mitigation fees constituted an unlawful tax under State law.

⁹⁷ *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*, 627 F.3d 730 (9th Cir. 2010) ("NAHB v. SJVUAPCD").

9510 (“Indirect Source Review (ISR)”), *i.e.*, the ISR rule at issue in *NAHB v. SJVUAPCD*, in part, by recognizing the rule as a type of rule that any State may include in its SIP but that the EPA may not require as a condition of approval of a SIP, under CAA section 110(a)(5).⁹⁸ In so doing, however, we did not intend thereby to define the scope of ISR rules in general but rather to take action on the specific rule that was submitted to the Agency. Likewise, in our action on SCAQMD Rule 2305, the EPA finds that the rule is the type of rule that a State may include in its SIP under CAA section 110(a)(5), but, in doing so, we do not intend to define the scope of ISR rules in general but only to take action on the specific rule submitted to us.

The EPA acknowledges differences between SJVUAPCD Rule 9510 and SCAQMD Rule 2305, but, contrary to the CTA’s assertion, both apply to sites or facilities, rather than to vehicles or engines. In the case of SJVUAPCD Rule 9510, the rule applies to larger development projects (*e.g.*, 50 residential units or 2,000 square feet of commercial space at full buildout), and in the case of SCAQMD Rule 2305, the rule applies to larger warehouses (*i.e.*, greater than 100,000 square feet of indoor floor space in a single building). Also, the issue of whether ISR rules can apply to existing as well as new or modified facilities was not raised in our action on SJVUAPCD Rule 9510. The EPA has explained, in our proposed rule, why we conclude that the District is not precluded, consistent with CAA section 110(a)(5), from regulating both existing and new warehouses in Rule 2305.⁹⁹ As such, our actions approving SJVUAPCD Rule 9510 and, in this document, approving SCAQMD Rule 2305 are not inconsistent but simply reflect two different approaches to ISR programs that States may adopt, but are not required to adopt, as part of their SIPs under CAA section 110(a)(5).

With respect to the purported inconsistency between SCAQMD Rule 2305 and CARB’s description of ISR rules that is cited by the EPA in the Agency’s authorization of CARB’s amended Ocean-Going Vessels At-Berth Regulation,¹⁰⁰ we note first that establishing an emissions cap may be a feature of an ISR rule, but it is not a required feature. Other than by defining the terms “indirect source” and “indirect source review program” and by distinguishing an ISR program from

a “transportation control measure,” CAA section 110(a)(5) does not prescribe any particular approach to ISR programs. Establishing a cap for emissions at an entire facility or reducing emissions below a certain facility-wide level are only two possible approaches in an ISR rule, but other approaches are possible as well. In the case of SCAQMD Rule 2305, the rule does not establish an emissions cap for warehouses and does not require emissions reductions below a certain level. Rather, Rule 2305 requires warehouse operators to earn points to meet an annual obligation based on a proxy for all mobile source emissions associated with warehouse operations, through completion of emissions-reducing actions or investments listed in Rule 2305, through such actions approved as part of a Custom WAIRE plan, or through paying the mitigation fee, approaches which are also consistent with CAA section 110(a)(5).¹⁰¹ What these approaches have in common is that they are examples of the types of facility-by-facility reviews of indirect sources to which CAA section 110(a)(5) refers.

F. Center for Community Action and Environmental Justice (CCAIEJ) Comments and EPA Responses

CCAIEJ Comment #1: The CCAIEJ expresses concerns that the SCAQMD will not disclose information necessary for the public to enforce SCAQMD Rule 2305. The CCAIEJ also expresses concerns that the SCAQMD has not developed a web portal for public access to that information, may withhold important compliance information as business confidential information, and may aggregate important compliance data. The CCAIEJ notes SCAQMD’s disclosure of a high (55 percent) noncompliance rate with Rule 2305, which, in CCAIEJ’s view, demonstrates the urgency of the EPA ensuring that the public can enforce Rule 2305. The CCAIEJ requests that the EPA conditionally approve, or partially approve and partially disapprove (or take other appropriate action under CAA section 110(k)), SCAQMD Rule 2305 to ensure that the SCAQMD amends Rule 2305 to address public disclosure of information to ensure that

the public can enforce the rule. The CCAIEJ also states that the EPA should require the SCAQMD to submit the program and parameters of the public’s access to WAIRE program compliance data for inclusion as part of the SIP.

EPA Response to CCAIEJ Comment #1: In EPA’s proposed rule, the EPA preliminarily concluded that Rule 2305 includes recordkeeping and reporting requirements that are sufficient to ensure compliance with the applicable requirements. In support of this preliminary conclusion, the EPA incorrectly referred to two sections of the California Code of Regulations (13 CCR 2023.8 and 13 CCR 2023.9). The correct references are to SCAQMD Rule 2305(d)(7)(A) (Warehouse Operations Notification or WON), 2305(d)(7)(B) (Initial Site Information Report), and 2305(d)(7)(C) (Annual WAIRE Report). Warehouse facility owners must submit WONS to the SCAQMD within certain time periods prescribed in Rule 2305. The obligation to submit Initial Site Information Reports to the SCAQMD falls on warehouse operators and the obligation to submit Annual WAIRE Reports falls on warehouse operators who are required to earn WAIRE Points, or warehouse facility, or landowners who earn WAIRE Points as applicable. Submission of these records, as stated by the SCAQMD, is through the WAIRE POP Portal.

In comments submitted in response to EPA’s proposed rule, the SCAQMD indicates that it has created a separate web page to provide information on the WAIRE Program to the public. The SCAQMD also indicates that it is evaluating a proposal to include additional WAIRE Program data, including aggregated information about compliance obligations and completed compliance actions, in its Facility Information Detail (“FIND”) tool. The EPA supports the SCAQMD’s efforts to provide online access to the public of rule compliance information, but providing such access is not a CAA requirement. The rule compliance information that SCAQMD provides online to the public will serve to supplement and enhance the information available to the public through more traditional means such as requests made to the SCAQMD under the California Public Records Act.¹⁰²

The EPA has no information at the present time that the SCAQMD’s review of public information requests under the California Public Records Act will substantially impair enforceability of the rule by the public, and the EPA

⁹⁸ The EPA approved SJVUAPCD Rule 9510 at 76 FR 26609 (May 9, 2011), and again as amended at 86 FR 33542 (June 25, 2021).

⁹⁹ 88 FR 70616, 70622.

¹⁰⁰ 88 FR 72461 (October 20, 2023).

¹⁰¹ Also, see the EPA’s response to comments on CARB’s request for authorization for CARB’s Ocean-Going Vessels At-Berth Regulation at 88 FR 72461, at 72474–72475 (October 20, 2023) (Quoting CARB: “Purpose of the Regulation is to achieve emissions reductions from each vessel visit. . . . While the Regulation does regulate ports and terminals, it does so only because regulating those entities has proven essential to ensuring each vessel visit is able to use an approved emission-reducing control technology.”)

¹⁰² See Ca. Gov’t Code sections 7920.000–7931.000.

declines to speculate as to the outcome of future responses by SCAQMD to public information requests related to Rule 2305. Accordingly, the EPA believes that citizens can obtain the information necessary to determine compliance by individual facilities with SCAQMD Rule 2305 with or without online access to rule compliance information.

As to the high noncompliance rate reported last year by the SCAQMD, the EPA is aware of this circumstance and agree with the CCAEJ on the importance of enforceability of Rule 2305 by the public, but the EPA also notes the specific actions SCAQMD has taken to improve compliance and to enforce the rule.¹⁰³

Lastly, because the EPA concludes that Rule 2305 includes recordkeeping and reporting requirements that are sufficient to ensure compliance with the applicable requirements, we have no occasion to explore alternatives to full approval under CAA section 110(k), such as a partial approval/partial disapproval or a conditional approval, with respect to this issue, nor does the EPA believe that it will be necessary to require the SCAQMD to submit the program and parameters of the public's access to WAIRE program compliance data for inclusion as part of the SIP.

CCAIEJ Comment #2: Citing the EPA's proposed approval that states that the online portal (WAIRE POP) will provide the public information about how warehouse operators and owners are complying with Rule 2305 and how WAIRE Mitigation Program funds are spent, the CCAIEJ notes that no such portal exists and that the District has not yet finalized what data would be made available on that portal.

EPA Response to CCAIEJ Comment #2: In comments submitted in response to the EPA's proposed rule, the SCAQMD indicates that the EPA's description of the WAIRE POP Portal in the proposed rule was not correct. The SCAQMD clarifies that the WAIRE POP Portal's purpose is to only electronically collect information, reports, and fees from warehouse owners and operators annually. The WAIRE POP Portal does not distribute information about the WAIRE Program to the public. If the public would like to enforce Rule 2305, they can request the data from the SCAQMD. This is in compliance with 40 CFR 51.211 which requires owners or operators of stationary sources to maintain records and periodically report

these records to the State or District. The SCAQMD also indicates that it has created a separate web page to provide information on the WAIRE Program to the public. That page hosts links to various resources related to the WAIRE Program, including the WAIRE Program's annual report as stated in EPA Response to CCAIEJ Comment #1.

G. International Warehouse Logistics Association (IWLA) Comments and EPA Responses

IWLA Comment #1: The IWLA believes that Rule 2305 will have unintended consequences and an overall negative effect on California's economy. The IWLA states that the mitigation fees accrued from the rule will raise the costs for California warehouse operators and increase the cost of living for Californians. The IWLA asserts that these increased costs will be regressive in nature and negatively impact lower-income communities.

EPA Response to IWLA Comment #1: The EPA notes that the commenter does not challenge EPA's conclusion that SCAQMD Rule 2305 generally meets all applicable CAA requirements but rather contends that rule will have unintended adverse economic and socioeconomic effects. However, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.¹⁰⁴

IWLA Comment #2: The IWLA asserts that the increased costs associated with Rule 2305 may cause some warehouse operators to relocate out of state and thereby increasing mobile source emissions as trucks travel from Southern California to new locations and decreasing employment opportunities.

EPA Response to IWLA Comment #2: With respect to economic challenges arising from Rule 2305, please see EPA Response to IWLA Comment #1. Also, we note that the SCAQMD considered the potential for warehouse relocation effects due to Rule 2305 based on two economic studies and peer reviews of those studies.¹⁰⁵ In response to

comments on proposed Rule 2305, the SCAQMD stated that these studies fully analyze the range of potential economic impacts and conversely the monetized public health benefits of Rule 2305 (and its associated fee rule, Rule 316).¹⁰⁶ The SCAQMD indicates that the studies conclude that the costs potentially imposed by Rule 2305 (and Rule 316) are not anticipated to cause warehouses to relocate outside of the region.¹⁰⁷

IWLA Comment #3: The IWLA states that Rule 2305's goal of reducing truck pollution is at the expense of the warehouse operator, not the truck operator. Moreover, the IWLA asserts that warehouse operators have no control over what types of trucks arrive at their facilities and that Rule 2305 does not incentivize trucking companies to upgrade their fleets to ZE/NZE trucks and is, in the end, simply a tax on warehouse operators.

EPA Response to IWLA Comment #3: With respect to economic or technological challenges arising from Rule 2305, please see EPA Response to IWLA Comment #1.

Nonetheless, the EPA acknowledges the challenges for warehouse operators in meeting the requirements of Rule 2305, but we note that warehouse operators have three basic options, or any combination of these options, through which to earn or obtain points sufficient to meet their WPCO and that all these options provide for points to be earned toward the WPCO from actions that do not involve ZE/NZE trucks or a combination of these options.

In addition, the EPA notes that, based on the SCAQMD's first Annual Report for the WAIRE Program, warehouse operators intend to meet their obligations under Rule 2305 in various ways with only limited reliance on the mitigation fee option as described in EPA's Response to BAR Logistics Comment #2.

IWLA Comment #4: The IWLA asserts that the SCAQMD has overreached its authority with Rule 2305 because, by statute, SCAQMD has jurisdiction over air pollutant emissions from stationary sources (*i.e.*, warehouses) in the region, but through Rule 2305, the SCAQMD is attempting to regulate mobile sources (trucks) even though the California Air Resources Board has jurisdiction over mobile sources.

Indirect Source Rule," December 23, 2020, and SCAQMD, "Final Socioeconomic Impact Assessment for Proposed Rule 2305—Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316—Fees for Rule 2305," May 2021.

¹⁰⁶ SCAQMD, Final Staff Report, Appendix F, Master Response 5.

¹⁰⁷ Id.

¹⁰³ See SCAQMD, Compliance Advisory, "Notice to All Warehouse Owners and Operators regarding Upcoming Enforcement Action and Potential Daily Penalties," September 12, 2023; and SCAQMD's list titled "Rule 2305 violations issued on 12/14/2023."

¹⁰⁴ *Union Electric Company v. EPA*, 427 U.S. 246, 265 (1976).

¹⁰⁵ SCAQMD, Final Staff Report, Appendix F, Master Response 5. The two economic studies are Industrial Economics, Inc. (IEC), "Assessment of Warehouse Relocations Associated with the South Coast Air Quality Management District Warehouse

EPA Response to IWLA Comment #4: Rule 2305 does not directly regulate mobile sources but is instead directed towards warehouses, which are facilities that attract mobile source emissions. As such, the EPA finds Rule 2305 to be an ISR regulation, and, in the proposed rule, the EPA addressed the issue of SCAQMD's authority under State law to adopt Rule 2305 by reference to California Health & Safety Code section 40440 ("Rules and regulations"), which authorizes the SCAQMD to provide for indirect source controls in those areas of the South Coast District that have high-level, localized concentrations of pollutants.¹⁰⁸

IWLA Comment #5: The IWLA asserts that the SCAQMD has presented no plan on how the new revenues generated from Rule 2305 will be spent, and on this basis, the IWLA believes Rule 2305 to be "arbitrary and capricious" under State law.

EPA Response to IWLA Comment #5: The commenter has not identified the specific State law provision that would present an obstacle to the SCAQMD's implementation of Rule 2305 due to the purported absence of a plan for spending mitigation fees collected by the Agency. The EPA notes that, in adopting Rule 2305, the SCAQMD Board directed the SCAQMD Executive Officer to develop the WAIRE Mitigation Program with funds generated from mitigation fee payments from Rule 2305.¹⁰⁹ The SCAQMD Board has established certain parameters that will govern how funds generated from mitigation fee payments are to be spent, how funds are to be awarded, and where funds are to be spent.

IWLA Comment #6: In addition to the hefty fees associated with Rule 2305, the IWLA asserts that there are many additional burdensome reporting requirements that will add substantial administrative fees to warehouse operations.

EPA Response to IWLA Comment #6: The reporting requirements in SCAQMD Rule 2305 are important elements of the rule to document compliance with the requirements of the rule and to provide for enforceability of the rule by the District, the EPA, and citizens. The EPA notes that the SCAQMD expects the administrative costs associated with recordkeeping and reporting for Rule 2305 to be similar to the administrative costs associated with CARB's Advanced Clean Trucks Regulation, specifically for large entity reporting, which is

estimated to be no more than 25 hours of work totaling \$1,250 per year.¹¹⁰

IWLA Comment #7: The IWLA states that the WAIRE mitigation points system requires warehouses to mitigate external truck emissions through the use of more sustainable technology within their warehouse operation and infrastructure, but much of the technology is still in its nascent phase and is presently cost-prohibitive and unproven in the field, especially as it pertains to hydrogen technology and heavy-duty ZE/NZE trucks.

EPA Response to IWLA Comment #7: In reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the CAA or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.¹¹¹

However, as noted in the EPA Response to BAR Logistics Comment #2, based on the SCAQMD's first Annual Report for the WAIRE Program, warehouse operators intend to meet their obligations under Rule 2305 in various ways with only limited reliance on the mitigation fee option. The first Annual Report suggests that warehouse operators expect to meet their WPCOs, at least in the early years of the program, primarily through ZE hostler usage, (*i.e.*, yard tractors that move trailers and containers around warehouse facilities; approximately 40% of the anticipated WAIRE points based on the Initial Site Information Report (ISIRs) received), NZE Class 8 Truck Visits (approximately 27%), and ZE hostler acquisition (approximately 8%).¹¹² More recent data shows that, for Year 2023, warehouse operators reported WAIRE Points primarily from hostler usage (53%), solar panel installation and usage (15%) and NZE truck usage (14%).¹¹³

IWLA Comment #8: The IWLA asserts that the stringency factor of 0.0025 seems to be arbitrary, there does not seem to be any modeling or science behind how the number was derived, and the hypothetical emission reductions do not appear to be practical. Furthermore, the stringency factor in Rule 2305 can be increased at any time

by the SCAQMD Board, at its sole discretion.

EPA Response to IWLA Comment #8: Under SCAQMD Rule 2305, the stringency factor is used along with WATT and an annual variable to determine the annual WPCO for a warehouse operator.¹¹⁴ The stringency factor in Rule 2305 is 0.0025 WAIRE Points per WATT.

During the District's rulemaking process, the SCAQMD explained that the stringency factor was developed on the basis of an analysis of 18 WAIRE Menu compliance scenarios and additional supporting analysis in the Socioeconomic Impact Assessment, including a warehouse relocation study.¹¹⁵ The SCAQMD noted that there is no mathematical equation governing the entire process, nor is there an overarching governing equation required, and that the totality of the impact of Rule 2305 was considered for the stringency of 0.0025 WAIRE Points per WATT.¹¹⁶ According to the SCAQMD, the benefits of Rule 2305 at the recommended stringency include, but are not limited to: significant emission reductions of about 1.5 to 3 tons per day of NO_x, the encouragement of many facilitating measures to enhance emission reductions from other programs, public health benefits for most compliance scenarios that are about three times higher than the costs, costs on industry that are not out of line with normal cost increases that the industry experiences routinely in rent hikes, a market signal for the goods movement industry to encourage adoption NZE and ZE technologies on a more widespread basis than the unregulated market would provide—and much faster than CARB would require with its regulations, satisfying the requirements of control measure MOB-03 in the 2016 AQMP, satisfying the commitment in AB 617 Community Emission Reduction Plans, and reducing emissions for local communities located closest to warehouses who have experienced disproportionate environmental burdens just by living where they do.¹¹⁷

The SCAQMD Board could, in the future, consider increasing the stringency factor, but prior to adoption, the SCAQMD would be required to meet State procedural requirements for rule amendments that including providing notice to the public of the proposed amendments and the opportunity for

¹¹⁰ SCAQMD Final Staff Report, p. 74.

¹¹¹ *Union Electric Company v. EPA*; 427 U.S. 246, 265 (1976).

¹¹² 88 FR 70616, 70619, citing information from SCAQMD, Annual Report for the Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program, January 2023, p. 15.

¹¹³ SCAQMD, Hybrid Mobile Source Committee Meeting, Agenda, March 15, 2024, p. 18.

¹¹⁴ SCAQMD Rule 2305(d)(1)(A).

¹¹⁵ SCAQMD, Final Staff Report, Appendix F, Response to Comment 45–6.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹⁰⁸ 88 FR 70616, 70620–70621.

¹⁰⁹ SCAQMD Resolution 21–9, adopted May 7, 2021, pp. 6–7.

public comment. No such amendment would be federally enforceable unless and until the State submits, and the EPA approves, amended Rule 2305 as a revision to the SIP under CAA section 110(k).

IWLA Comment #9: The IWLA asserts that warehouses in SCAQMD coverage areas will be placed at a competitive disadvantage and beneficial cargo owners will look to divert their cargo to alternative areas in surrounding States or to alternative ports of entry to warehouse and distribute their goods.

EPA Response to IWLA Comment #9: Please see EPA Response to IWLA Comment #2.

IWLA Comment #10: The IWLA states that Rule 2305 does not adequately address why the SCAQMD or another air district cannot adopt even more expansive ISRs (e.g., what would stop SCAQMD from imposing an ISR on retailers based on vehicle traffic to their locations).

EPA Response to IWLA Comment #10: This comment is beyond the scope of this rulemaking. The EPA will consider future ISRs for compliance with CAA requirements if and when such ISRs are submitted as revisions to the SIP.

IWLA Comment #11: The IWLA asks that the EPA not approve SCAQMD Rule 2305 into the California SIP.

EPA Response to IWLA Comment #11: Under CAA section 110(k), the EPA is obligated to approve, disapprove, or conditionally approve, in whole or in part, SIP revisions submitted to the Agency within a prescribed period. Thus, the EPA is obligated to take a final action on Rule 2305. In addition, the EPA notes that an EPA disapproval of Rule 2305 would not prevent the implementation of Rule 2305 within the SCAQMD because the rule would still be enforceable, under State law, regardless of the EPA's action to approve or disapprove SCAQMD Rule 2305 as a revision to the California SIP. The consequence of the EPA's approval of Rule 2305 as a revision to the SIP is that the rule becomes federally enforceable.

H. Private Citizen Comments and EPA Responses

Private Citizen Comment #1: The private citizen states that the EPA is calling for SCAQMD Rule 2305 to go into effect and for the affected parties to conform to SCAQMD Rule 2305 by the 2024 calendar year. This compliance deadline, contends the private citizen, will have a negative impact on warehouses, specifically the truck drivers that Rule 2305 will impact. The private citizen contends that it is unreasonable to require a warehouse to

comply by the beginning of 2024 or pay a mitigation fee.

EPA Response to Private Citizen Comment #1: The EPA notes that the commenter does not challenge EPA's conclusion that SCAQMD Rule 2305 generally meets all applicable CAA requirements but rather contends that rule will go into effect with insufficient time for warehouse operators to meet the requirements and will thereby result in negative economic effects. However, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the minimum criteria set in the Clean Air Act or any applicable EPA regulations. Thus, considerations such as whether a District rule may be economically or technologically challenging cannot form the basis for EPA disapproval of a rule submitted by a State as part of a SIP.¹¹⁸

Also, an EPA disapproval of Rule 2305 would not prevent the implementation of Rule 2305 within the SCAQMD because the rule would still be enforceable, under State law, regardless of the EPA's action to approve or disapprove SCAQMD Rule 2305 as a revision to the California SIP. The timing of the EPA's approval of Rule 2305 as a revision to the SIP does not affect the compliance deadlines set forth in the rule (and that already are in effect under State law) but, rather, affects when the rule becomes federally enforceable.

Lastly, we note that Rule 2305 has been in effect since May 2021 and that the rule was designed to apply the requirements in three phases beginning with year 2022 with the largest warehouses (greater than or equal to 250,000 square feet), then to year 2023 for medium-sized warehouses (between 150,000 and 250,000 square feet), and then to year 2024 for smaller warehouses (100,000 to 150,000 square feet).¹¹⁹ Within each phase, the requirements themselves are phased in through the use of an annual variable that begins with a 0.33 value in the first year, a 0.67 value in the second year, and a 1.0 value in the third and subsequent years.¹²⁰ Again, the timing of the EPA's action on SCAQMD Rule 2305 under CAA section 110(k) has no effect on the compliance deadlines set forth in Rule 2305.

Private Citizen Comment #2: The private citizen asserts that the proposed rule fails to adequately address the ambiguity in CAA section 110(a)(5) as to whether the term "indirect source

review program" encompasses existing, as well as new or modified, facilities. The private citizen states that the ambiguity poses a problem for compliance with the new rule. Also, the private citizen states that the EPA's proposed rule fails to address the ambiguity in a meaningful way, which, in turn, may lead to litigation and potential delay in achieving the emissions reductions that the rule is intended to achieve.

EPA Response to Private Citizen Comment #2: With respect to the comment regarding the applicability of ISR programs to existing, and not just new or modified, indirect sources under CAA section 110(a)(5), please see EPA Response to POLB Comment #3.

As to the issue of the purported ambiguity in CAA section 110(a)(5) affecting compliance with Rule 2305, we note that Rule 2305 unambiguously applies to both existing and new warehouses of a certain size, and thus, the purported ambiguity in CAA section 110(a)(5) has no bearing on compliance with Rule 2305.

Lastly, as to the potential for this issue to lead to litigation, the EPA notes that this particular issue was included among the issues raised in a legal challenge against the SCAQMD's adoption of Rule 2305. In that case, the Court ruled in favor of the SCAQMD and, as to this issue, stated: "Nothing in the text, structure, or purpose of the indirect-source-review provision suggests that this phrase limits indirect source reviews to those based on new and modified indirect sources."¹²¹ The EPA finds that the Court's decision and rationale provide further support to the EPA's conclusion as to this particular issue.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is approving SCAQMD Rule 2305 into the California SIP. The EPA concludes that, while SCAQMD Rule 2305 does not meet all the evaluation criteria for enforceability (i.e., certain definitions that cross-reference rules that are not part of the SIP, the sunset clause, and certain instances of unbounded director's discretion), we are taking final action to approve it because it is not a required SIP element and would

¹¹⁸ *Union Electric Company v. EPA*, 427 U.S. 246, 265 (1976).

¹¹⁹ SCAQMD Rule 2305, Table 1.

¹²⁰ SCAQMD Rule 2305, Table 2.

¹²¹ *CTA v. SCAQMD*, Order Re: Plaintiff's Motion for Summary Judgment as to Plaintiff's Complaint for Declaratory Judgment and Injunctive Relief (Dkt. 65); and Plaintiff-Intervenor Airlines for America's Motion for Summary Judgment (Dkt. 73), Dkt. 162, December 14, 2023, p. 28.

strengthen the SIP. In light of the deficiencies, however, the EPA concludes that the submitted rule should not be credited in any attainment and rate of progress/ reasonable further progress demonstrations. This final action incorporates SCAQMD Rule 2305 into the federally enforceable SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of SCAQMD Rule 2305, Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program, adopted on May 7, 2021, that establishes an Indirect Source Review program for certain warehouse owners and operators within the SCAQMD. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX 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

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), 13563 (76 FR 3821, January 21, 2011) 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 (Public Law 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); 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 communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines 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.”

The SCAQMD did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. However, the Community Steering Committees for four communities admitted into the State's Community Air Protection Program, created by Assembly Bill 617, in the affected area requested development of a warehouse ISR rule due to concerns regarding air pollution impacts from trucks and diesel particulate matter.¹²² The focus of the Community Air Protection Program is to reduce exposure in communities most impacted by air pollution.¹²³ The

EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, 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 EJ for communities with EJ concerns.

Lastly, 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, this action 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).

This action is subject to the Congressional Review Act, 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).

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 12, 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, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 4, 2024.

Martha Guzman Aceves,
Regional Administrator, Region IX.

For the reasons stated in the preamble, the Environmental Protection Agency amends part 52, chapter I, title 40 of the Code of Federal Regulations as follows:

¹²² SCAQMD Final Staff Report, pp. 9–10.

¹²³ CARB, Community Air Protection Blueprint For Selecting Communities, Preparing Community Emissions Reduction Programs, Identifying Statewide Strategies, and Conducting Community Air Monitoring, October 2018, page 1.

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 F—California

■ 2. Section 52.220 is amended by adding reserved paragraph (c)(615) and adding paragraph (c)(616) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(615) [Reserved]

(616) The following regulation was submitted on August 13, 2021, by the Governor’s designee.

(i) *Incorporation by reference.* (A) South Coast Air Quality Management District.

(1) Rule 2305, “Warehouse Indirect Source Rule—Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program,” adopted on May 7, 2021.

(2) [Reserved]

(B) [Reserved]

(ii) [Reserved]

* * * * *

[FR Doc. 2024–20349 Filed 9–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2024–0065; FRL–11597–01–OAR]
RIN 2060–AW15

Phasedown of Hydrofluorocarbons: Vacated Provisions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency is taking final action to remove regulations from the Code of Federal Regulations that have been vacated by the United States Court of Appeals for the District of Columbia Circuit related to the prohibition of disposable cylinders and tracking of cylinders of hydrofluorocarbons.

DATES: This final rule is effective on September 11, 2024.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this action under Docket ID No. EPA–HQ–OAR–2024–0065. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information may not be 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 electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Connor Henderson, Stratospheric Protection Division and Office of Air and Radiation (6205A), Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20460; telephone number: 202–564–2177; email address: Henderson.Connor@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action may be relevant for you if you produce, import, export, destroy, use as a feedstock or process agent, reclaim, or recycle HFCs. Potentially relevant categories, North American Industry Classification System (NAICS) codes, and examples of potentially relevant entities are included in table 1. This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that may be interested in this action. If you have questions regarding the relevance of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY RELEVANT ENTITIES

NAICS Code	NAICS industry description
325120	Industrial Gas Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326220	Rubber and Plastics Hoses and Belting Manufacturing.
326150	Urethane and Other Foam Product.
326299	All Other Rubber Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.
334413	Semiconductor and Related Device Manufacturing.
334419	Other Electronic Component Manufacturing.
334510	Electromedical and Electrotherapeutic Apparatus Manufacturing.
336212	Truck Trailer Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
336411	Aircraft Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
339112	Surgical and Medical Instrument Manufacturing.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
488510	Freight Transportation Arrangement.
541380	Testing Laboratories.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY RELEVANT ENTITIES—Continued

NAICS Code	NAICS industry description
541714	Research and Technology in Biotechnology (except Nanobiotechnology).
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
922160	Fire Protection.

II. Basis for Immediate Effective Date

EPA has determined that it is consistent with the Administrative Procedure Act (APA), 5 U.S.C. 553(d), to make this action effective September 11, 2024, Section 553(d)(3) provides that final rules shall not become effective until 30 days after publication in the **Federal Register** “except . . . as otherwise provided by the agency for good cause found and published with the rule.” “In determining whether good cause exists, an agency should balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 79 F.3d 620, 630 (D.C. Cir. 1996) (quoting *United States v. Gavrilovic*, 551 F.2d 1099, 1105 (8th Cir. 1977)). The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Id.*; see also *Gavrilovic*, 551 F.2d at 1104 (quoting legislative history).

The EPA has determined that in light of the nature of this action, good cause exists to make this final action effective immediately because the Agency seeks to provide regulatory certainty and clarity as soon as possible. The removal of vacated regulations from the Code of Federal Regulations does not change the status quo or impose new obligations on any person or entity. As a result, there is no need to provide parties additional time to adjust their behavior, and no person will be harmed by making the action immediately effective as opposed to delaying the effective date by 30 days. Accordingly, EPA is making this action effective immediately upon publication.

III. Removal of Vacated Provisions on Disposable Cylinder Ban and Cylinder Tracking

On September 23, 2021, EPA signed a final rule that was the first regulation under the American Innovation and Manufacturing (AIM) Act. This rule established the initial production and consumption baseline levels against which the phasedown of production and consumption of hydrofluorocarbons

(HFCs) would be measured, established an initial methodology for allocating and trading HFC allowances for 2022 and 2023, and created a robust, agile, and innovative compliance and enforcement system. *Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act*, 86 FR 55116 (October 5, 2021) (hereinafter referred to as the Allocation Framework Rule). EPA explained in that rule that it was establishing a comprehensive system of mechanisms that together and by themselves would discourage and prevent illegal production, import, and subsequent sales of illegally produced or imported HFCs. EPA intended for, and designed, these provisions to each stand independently from the others and to provide significant stand-alone benefits to deter and identify potential violations, while also recognizing that these separate provisions work together as a comprehensive system to deter noncompliance, incentivize future compliance, and ensure that companies that are complying with statutory and regulatory obligations are not put at a competitive disadvantage. *Id.* at 55166. As part of the suite of compliance and enforcement tools, EPA finalized a prohibition that as of July 1, 2025, no person may import or domestically fill HFCs in a disposable cylinder, and as of January 1, 2027, no person may sell or distribute, or offer for sale or distribution HFCs contained in a disposable cylinder at 40 CFR 84.5(h). *See id.* at 55172–78. As an additional, separate compliance enforcement tool, EPA finalized a requirement that as of January 1, 2025, all containers of regulated substances imported, sold, or distributed by producers and importers have a quick response (QR) code. As of January 1, 2026, the rule would require QR codes on all containers filled, sold or distributed, or offered for sale or distribution, by all other repackagers and cylinder fillers in the United States, including reclaimers and fire suppressant recyclers. Finally, as of January 1, 2027, the rule would require a QR code on every container of regulated substances sold or distributed, offered for sale or distribution,

purchased or received. 40 CFR 84.23. *See id.* at 55183–86.

However, on June 20, 2023, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion concluding, in relevant part, that EPA in relying on subsection (e)(2)(B) of the AIM Act had not identified a provision of the AIM Act giving it authority to ban disposable cylinders or to require a QR-code tracking system. As a result of this conclusion, the D.C. Circuit vacated the parts of the Allocation Framework Rule related to the QR code requirements and disposable cylinder ban and remanded to the Agency. *Heating, Air Conditioning & Refrigeration Distributors Int’l v. EPA*, 71 F.4th 59, 68 (D.C. Cir. 2023).¹ On August 23, 2023, the D.C. Circuit issued its formal mandate.

Consistent with the D.C. Circuit’s decision, this action removes from 40 CFR part 84, subpart A certain regulatory provisions that prohibit use of disposable cylinders and that implement the cylinder tracking system (including provisions that create auditing obligations related to the cylinder tracking system). EPA views this removal of regulatory language that has been vacated by the D.C. Circuit as purely ministerial in nature.

IV. Good Cause Findings

EPA is removing the identified vacated regulations from the Code of Federal Regulations without providing an opportunity for public comment or a public hearing because EPA finds that the Administrative Procedure Act (APA) good cause exemption applies here. If 5 U.S.C. 553(b)(B) did not apply, this rule would be subject to the rulemaking procedures in Clean Air Act (CAA) section 307(d).² However, CAA section

¹ As the D.C. Circuit denied the other challenges to the Allocation Framework Rule raised in this consolidated litigation, its vacatur was only partial.

² The AIM Act provides that the Clean Air Act’s section 307 “shall apply to” actions under the AIM Act “as though [Section 7675] were expressly included in title VI” of the Clean Air Act. 42 U.S.C. 7675(k)(1)(C). Clean Air Act Section 307(d) applies to “promulgation or revision of regulations under subchapter VI of [the CAA].” 307(d)(1)(I); 7607(d)(1)(I). See also CAA section 307(d)(3); 42 U.S.C. 7607(d)(3) (requiring publication of a

307(d) does not apply “in the case of any rule or circumstance referred to in [5 U.S.C. 553(b)(B)]”³ — *i.e.*, the good cause exception noted above.⁴ Section 553(b)(B) allows an agency to promulgate a rule without providing prior notice and opportunity for public comment “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

The EPA has determined that it is unnecessary to provide a public hearing or an opportunity for public comment on this action because amending the regulations to remove the vacated disposable cylinder ban and cylinder tracking provisions is a needed ministerial act. To address the D.C. Circuit’s vacatur of these provisions, as described in section I of this document, the EPA is removing the affected provisions from the Code of Federal Regulations. Therefore, this action to remove the affected regulatory text simply implements the decision of the D.C. Circuit, and thus, providing an opportunity for public comment or a public hearing on this issue would serve no useful purpose.

For these reasons, the EPA finds good cause to issue a final rulemaking to remove the disposable cylinder ban and cylinder tracking provisions pursuant to 5 U.S.C. 553(b)(B). Therefore, the requirements of CAA section 307(d), including the requirement for public comment and hearing on proposed rulemakings, do not apply to this action.

V. Judicial Review

The AIM Act provides that certain sections of the CAA “shall apply to” the AIM Act and actions “promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].” 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Section 307(b)(1) provides, in part, that petitions for review must only be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator,” or (ii) when such action

is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions, the CAA reserves to the EPA complete discretion whether to invoke the exception in (ii).

The final action herein noticed is “nationally applicable” within the meaning of CAA section 307(b)(1), as it removes vacated provisions from the Code of Federal Regulations that apply and were designed to be implemented uniformly on a national basis. In the alternative, to the extent a court finds the final action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that the action is based on a determination of “nationwide scope or effect” within the meaning of CAA section 307(b)(1).⁵ In deciding to invoke this exception, the Administrator has taken into account a number of policy considerations, including his judgment regarding the benefit of obtaining the D.C. Circuit’s authoritative centralized review, rather than allowing development of the issue in other contexts, in order to ensure consistency in the Agency’s approach to allocation of production and consumption allowances in accordance with EPA’s national regulations in 40 CFR part 84. This final action treats all affected entities consistently in how the 40 CFR part 84 regulations are applied. The Administrator finds that this is a matter on which national uniformity is desirable to take advantage of the D.C. Circuit’s administrative law expertise and facilitate the orderly development of the basic law under the AIM Act and EPA’s implementing regulations. The Administrator also finds that consolidated review of the action in the D.C. Circuit will avoid piecemeal litigation in the regional circuits, further judicial economy, and eliminate the risk of inconsistent results for different regulated entities. The Administrator also finds that a nationally consistent approach in this rulemaking constitutes the best use of agency resources. The Administrator is publishing his finding that the action is based on a determination of nationwide scope or

effect in the **Federal Register** as part of this document. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and finds that the final action is based on a determination of nationwide scope or effect for purposes of CAA section 307(b)(1) and is hereby publishing that finding in the **Federal Register**. Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by November 12, 2024.

VI. Statutory and Executive Order Review

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 and Executive Order 14094: Modernizing Regulatory Review

This action is a “significant regulatory action” as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The removal of vacated requirements from the Code of Federal Regulations through this action does not impose new or change existing legal obligations on any person or entity. EPA describes the vacated provisions, including their expected costs and benefits, in the HFC Allocation Framework Rule (86 FR 55116, FRL–8458–02–OAR, published in the **Federal Register** on October 5, 2021) and the related regulatory impact analysis (RIA).

The court’s decision to vacate these provisions in 2023 changed the estimated costs and benefits associated with the HFC Allocation Framework Rule. As shown in table 3–28 of the RIA, EPA estimated the average annual costs for the refillable cylinder provisions between 2022 and 2050 to be \$21.8 million per year at a 3% discount rate and \$35.3 million per year at a 7% discount rate (\$2020). While the upfront costs of establishing a fleet of refillable cylinders was higher than the average annual cost, after 2026 when the full fleet of disposable cylinders was in place, the Agency estimated that the requirement would result in annual cost savings. It was estimated that the replacement of disposable cylinders

proposed rule with an opportunity for public comment).

³ See CAA section 307(d)(1); 42 U.S.C. 7607(d)(1).

⁴ Section 553(b) generally requires notice-and-comment rulemaking procedures unless, as here, an exception applies under section 553(b)(A) or (B). 5 U.S.C. 553(b).

⁵ In the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator’s determination that the “nationwide scope or effect” exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03.

with refillable cylinders in the United States could also prevent 29 million MTEVe in emissions between 2022 to 2050 (see table 3–21 of the RIA). The EPA noted emission reductions as co-benefits in the RIA, therefore emission reductions were not included in topline benefits estimate for the HFC Allocation Framework Rule. The costs for the container tracking system finalized in the HFC Allocation Framework Rule were estimated to cost \$7.8 million annually once fully phased in and were part of the total reporting and recordkeeping burden included in table 3–13 of the RIA. Both provisions were expected to support compliance with the overall phasedown targets, ensuring U.S. consumption and production were below the levels authorized in the AIM Act and related implementing regulations. More discussion on the costs and benefits are included in chapters 3 and 5 of the regulatory impact analysis for the HFC Allocation Framework Rule, with more detail on the estimated container tracking costs included in the information collection request (ICR) supporting statement for the proposed rule “Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years,” (87 FR 66372, November 3, 2022).⁶

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0734. There are no additional reporting or recordkeeping requirements associated with this rule, which takes the ministerial act of removing certain vacated provisions from the Code of Federal Regulations. Given the requirements were vacated in the summer of 2023, EPA removed the burden associated with the refillable cylinder and container tracking provisions in the comprehensive ICR supporting statement and burden estimates for the HFC Allocation Program that were transmitted to OMB for review as part of the final rule ICR package associated with “Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and

Later Years,” (88 FR 44220). This information was transmitted to OMB in January 2024 (see OMB control number 2060–0734). Further, we do not need to take additional comment on these changes, as commenters had the opportunity to comment on the burden of these provisions and the change in burden from the court’s vacatur in prior rulemaking.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

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. The action imposes no enforceable duty on any State, local, or Tribal governments.

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: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. To the extent this action has any substantive effect, EPA is not aware of Tribal businesses engaged in activities that would be directly affected by this action. Based on the Agency’s assessments, the Agency also does not believe that potential effects, even if direct, would be substantial. Accordingly, this action will not have substantial direct effects on 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to Executive Order 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As noted, this action only removes already vacated provisions from the Code of Federal Regulations so is not anticipated to have any impact on children.

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This action only removes from the Code of Federal Regulations already vacated provisions that applied to certain regulated substances and certain applications containing regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act and Incorporation by Reference

This rulemaking does not involve technical standards.

J. Executive Orders 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation’s Commitment to Environmental Justice for All

EPA considers that the human health or environmental conditions that exist prior to this action have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. EPA did extensive environmental justice analysis as part of the Allocation Framework Rule and the most recent Allocation Framework Rule covering 2024–2028 (88 FR 46836, July 20, 2023), which is documented in the preamble to those rulemakings and in the associated regulatory impact analysis (RIA) and RIA addendum.

⁶ The regulatory impact analysis for the HFC Allocation Framework Rule can be found on EPA’s website at <https://www.epa.gov/climate-hfcs-reduction/regulatory-actions-allowance-allocation-and-reporting>. The ICR supporting statement associated with the rule can be found at <https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=2060-0734>.

The EPA believes that this action is not likely to change existing disproportionate and adverse effects on communities with environmental justice concerns. This action only removes from the Code of Federal Regulations already vacated provisions and is not likely to result in new disproportionate and adverse effects on communities with environmental justice concerns.

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).

List of Subjects in 40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate Change, Emissions, Imports, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

For the reasons set out in the preamble, EPA is amending 40 CFR part 84 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

- 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

§ 84.5 [Amended]

- 2. Amend § 84.5 by removing and reserving paragraph (h).

§ 84.23 [Removed and Reserved]

- 3. Remove and reserve § 84.23.

§ 84.33 [Amended]

- 4. Amend § 84.33 by:
 - a. Removing paragraph (b)(11);
 - b. Redesignating paragraph (b)(12) as paragraph (b)(11);
 - c. Removing paragraph (d)(4); and
 - d. Redesignating paragraph (d)(5) as paragraph (d)(4).

[FR Doc. 2024–20191 Filed 9–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2024–0116; FRL–11972–03–R4]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final action.

SUMMARY: The Environmental Protection Agency is withdrawing the direct final action, North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions, published on July 15, 2024, which authorized revisions to North Carolina’s hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. Because the EPA received comments opposing the action, the EPA is withdrawing the direct final action. The EPA will address these comments and make a final authorization decision, in a subsequent final action, based on the proposed rule, also published on July 15, 2024.

DATES: As of September 11, 2024, the EPA withdraws the direct final action published on July 15, 2024, at 89 FR 57364.

FOR FURTHER INFORMATION CONTACT:

Leah Davis; RCRA Programs and Cleanup Branch; Land, Chemicals and Redevelopment Division; U.S. Environmental Protection Agency; Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960; telephone number: (404) 562–8562; fax number: (404) 562–9964; email address: davis.leah@epa.gov.

SUPPLEMENTARY INFORMATION: The EPA is withdrawing the direct final action, North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions, published on July 15, 2024, at 89 FR 57364, which intended to grant authorization for revisions to North Carolina’s hazardous waste program. The EPA stated in the direct final action that if the EPA received comments opposing the authorization during the comment period, the EPA would publish a timely notice of withdrawal in the **Federal Register**. Because the EPA did receive adverse comments, the EPA is withdrawing the direct final action. The EPA will address all comments and make a final authorization decision in a subsequent final action based on the proposed rule, also published on July

15, 2024, at 89 FR 57381. The EPA will not provide for additional public comment on the final action.

Dated: September 4, 2024.

Cesar Zapata,
Acting Deputy Regional Administrator,
Region 4.

[FR Doc. 2024–20338 Filed 9–10–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 88

[Docket No. CDC–2024–0067; NIOSH–353]

RIN 0920–AA86

World Trade Center (WTC) Health Program; Expanded Eligibility for Pentagon and Shanksville, Pennsylvania Responders

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Interim final rule.

SUMMARY: This interim final rule updates existing regulations governing the WTC Health Program, which provides medical monitoring and treatment to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania, and to eligible survivors of the New York City attacks. This rulemaking expands existing eligibility criteria for enrollment of new Pentagon and Shanksville responders, caps those new members at 500, and makes various conforming amendments to the WTC Health Program regulations to align with statutory changes.

DATES: This interim final rule will be effective September 11, 2024. The WTC Health Program invites written comments from interested parties on this interim final rule and on the information collection approval request sought under the Paperwork Reduction Act. Comments must be received by October 11, 2024.

ADDRESSES: Written comments:

Comments, including those related to the Paperwork Reduction Act, may be submitted by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments to the docket.
- **Mail:** NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 1090

Tusculum Avenue, Cincinnati, OH 45226.

Instructions: All submissions received must include the agency name (Centers for Disease Control and Prevention, HHS) and docket number (CDC–2024–0067; NIOSH–353) or Regulation Identifier Number (0920–AA86) for this rulemaking. All relevant comments, including any personal information provided, will be posted without change to <https://www.regulations.gov>. Do not submit comments by email. CDC does not accept comments by email. For detailed instructions on submitting public comments, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Rachel Weiss, Public Health Analyst, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS: C–46, Cincinnati, OH 45226; telephone: (404) 498–2500 (this is not a toll-free number); email: NIOSHregs@cdc.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested parties may participate in this rulemaking by submitting written views, opinions, recommendations, and data. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Any information in comments or supporting materials that is confidential or not intended to be disclosed should not be included. CDC will consider the comments submitted and may revise the final rule as appropriate.

II. Background

Title I of the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act), as amended, revised the Public Health Service Act (PHS Act) to establish the WTC Health Program (Program), which is administered by the National Institute for Occupational Safety and Health (NIOSH), within CDC. The WTC Health Program provides medical monitoring and treatment to eligible responders to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania, and to eligible survivors of the New York City attacks.

In this interim final rule, the Administrator of the WTC Health Program and the Secretary of HHS revise the implementing regulation for the Program in a limited manner to only align with the statutory changes to the PHS Act. Specifically, the revisions made by this rulemaking include

expanding eligibility criteria for Pentagon and Shanksville responders, adding a numerical limit on Pentagon and Shanksville responders enrolled under the new eligibility criteria, updating the language in the regulation regarding the numerical limit on certain newly enrolled WTC responders and certified-eligible survivors, and updating and adding definitions into the WTC Health Program regulations in 42 CFR part 88.

A. WTC Health Program Statutory Authority

Title I of the Zadroga Act¹ (Pub. L. 111–347, as amended by Pub. L. 114–113, Pub. L. 116–59, Pub. L. 117–328, and Pub. L. 118–31) added Title XXXIII to the PHS Act, codified at 42 U.S.C. 300mm–300mm–64, establishing the WTC Health Program within HHS. The WTC Health Program provides medical monitoring and treatment benefits to eligible firefighters and related personnel, law enforcement officers, and rescue, recovery, and cleanup workers who responded to the September 11, 2001, terrorist attacks in New York City, at the Pentagon, and in Shanksville, Pennsylvania (responders), and to eligible persons who were present in the dust or dust cloud on September 11, 2001, or who worked, resided, or attended school, childcare, or adult daycare in the New York City disaster area (survivors).

All references to the Administrator in this document mean the Director of NIOSH, within CDC, or his or her designee.

B. Regulatory Background

Following the enactment of the Zadroga Act, the HHS Secretary promulgated 42 CFR part 88 to establish the WTC Health Program within NIOSH. The Zadroga Act prescribed eligibility criteria for Pentagon and Shanksville, Pennsylvania responders and required the Administrator to establish the dates on which cleanup was concluded at the Pentagon and Shanksville sites, respectively.² The Administrator promulgated the eligibility criteria and cleanup dates in 42 CFR 88.4(b) and (c) through a rulemaking published on March 28, 2013.³ Following the rulemaking, eligible Pentagon and

Shanksville responders include those individuals who:

- Were active or retired members of a fire or police department (fire or emergency personnel), worked for a recovery or cleanup contractor, or were volunteers; and
- Performed rescue, recovery, demolition, debris cleanup, or other related services, either at the Pentagon site of the September 11, 2001, terrorist attacks, for at least 1 day beginning September 11, 2001, and ending on November 19, 2001, or at the Shanksville, Pennsylvania site for at least 1 day beginning September 11, 2001, and ending on October 3, 2001.

Since 2013, the WTC Health Program has enrolled 1,304 Pentagon responders and Shanksville, Pennsylvania responders, combined. In 2023, Congress identified a gap in coverage for the population of employees of the Department of Defense (DOD) or other Federal agencies, certain DOD and Federal agency contractors, and regular or reserve uniformed service members who responded to the Pentagon and Shanksville sites; these personnel have previously not met the statutory eligibility criteria in the Zadroga Act due to their specific types of employment.

C. Need for Rulemaking

The National Defense Authorization Act, 2024 (Pub. L. 118–31, December 22, 2023) (2024 NDAA) amended Title XXXIII of the PHS Act to expand eligibility criteria for responders to the September 11, 2001, terrorist attacks at the Pentagon and in Shanksville, Pennsylvania. The new statutory criteria for both sites establish eligibility criteria for an individual who:

- was an employee of the DOD or any other Federal agency,
- worked during the period beginning on September 11, 2001, and ending on September 18, 2001, for a contractor of the DOD or any other Federal agency, or
- was a member of a regular or reserve component of the uniformed services.⁴

Such individuals must have “performed rescue, recovery, demolition, debris cleanup, or other related services” during the respective cleanup periods at the Pentagon or Shanksville, Pennsylvania sites.⁵

¹ Those portions of the Zadroga Act found in titles II and III of Public Law 111–347 do not pertain to the WTC Health Program and are codified elsewhere.

² 42 U.S.C. 300mm–21(a)(2)(C)(i)(I) and (II).

³ *World Trade Center Health Program Eligibility Requirements for Shanksville, Pennsylvania and Pentagon Responders*, Interim Final Rule, 78 FR 18855, March 28, 2013.

⁴ 42 U.S.C. 300mm–21(a)(2)(C)(i)(III) and (IV).

⁵ The Administrator previously determined that the cleanup period at the Pentagon site concluded on November 19, 2001; the cleanup period at the Shanksville, Pennsylvania site was determined to have concluded on October 3, 2001. 78 FR 18855, March 28, 2013; *World Trade Center Health Program; Amendments to Definitions, Appeals, and*

The 2024 NDAA amendments also define the terms *Federal agency* and *uniformed services*. A Federal agency is “[a]n agency, office, or other establishment in the executive, legislative, or judicial branch of the Federal Government.”⁶ The uniformed services are “the armed forces; the commissioned corps of the National Oceanic and Atmospheric Administration; and the commissioned corps of the Public Health Service.”⁷

In addition to the expanded eligibility criteria, the 2024 NDAA amendments direct that the total number of Pentagon or Shanksville responders who may be enrolled pursuant to the expanded eligibility criteria is limited to 500 individuals at any time⁸ and excludes these responders from the numerical limitations for newly enrolled responders.⁹ Previous amendments to Title XXXIII (Continuing Appropriations Act, 2020, and Health Extenders Act of 2019, Pub. L. 116–59, September 27, 2019) increased the numerical limitations for newly enrolled WTC responders and certified-eligible WTC survivors enrolled pursuant to the original eligibility criteria¹⁰ from 25,000 to 75,000 each.

In order to operationalize the 2024 NDAA amendments, this rulemaking adds the new statutory definitions of the terms *Federal agency* and *uniformed services* to the existing definitions in 42 CFR 88.1; expands existing Pentagon and Shanksville, Pennsylvania eligibility criteria in § 88.4(b) and (c), respectively; and adds a numerical limit for the new population of Pentagon and Shanksville responders to § 88.6(c)(2)(ii). Without making these changes to part 88, it would not be possible for these responders to enroll and participate in the WTC Health Program.

This rulemaking also makes conforming changes to align part 88 with the Zadroga Act, as amended by the Continuing Appropriations Act, 2020, and Health Extenders Act of 2019.

Other Requirements, Final Rule, 81 FR 90926, December 15, 2016.

⁶ 42 U.S.C. 300mm–5(5).

⁷ 42 U.S.C. 300mm–5(13) adopting by reference the definition at 10 U.S.C. 101(a).

⁸ 42 U.S.C. 300mm–21(a)(4)(A)(i).

⁹ 42 U.S.C. 300mm–21(a)(4)(A)(i).

¹⁰ For purposes of the numerical limitation, eligibility criteria for WTC responders are those newly enrolled responders identified in 42 U.S.C. 300mm–21(a)(1)(B)–(C), except FDNY family members and the new categories of Pentagon and Shanksville responders added by the 2024 NDAA. 42 U.S.C. 300mm–21(a)(4)(A)(i). The numerical limitation for certified-eligible WTC survivors applies to those newly enrolled survivors identified in 42 U.S.C. 300mm–31(a)(1)(A)(ii)–(iii) and certified with a WTC-related health condition pursuant to 42 U.S.C. 300mm–31(a)(2)(B).

The numerical limits for certain newly enrolled WTC responders and certified-eligible WTC survivors in §§ 88.6(c)(2)(i) and 88.12(b)(3)(i), respectively, are replaced with language indicating that the number of responders or certified-eligible survivors established may not exceed the limit established in the Act. Because the statutory limits were raised in 2019 and immediately went into effect, this change is considered non-substantive and will not result in any regulatory impact. The existing definitions of the terms *Act* and *WTC Health Program* are also revised to update the statutory references.

D. Issuance of Interim Final Rule With Immediate Effective Date

Rulemaking is required to update WTC Health Program regulations to reflect the 2024 NDAA amendments expanding those groups eligible for enrollment as responders at the Pentagon and Shanksville, Pennsylvania sites. Once the expanded eligibility criteria are added to 42 CFR part 88, the WTC Health Program can begin accepting applications from those individuals who may qualify for the Program. HHS has determined that an interim final rule, rather than a notice of proposed rulemaking, is appropriate in this instance to ensure the new eligibility criteria expanding enrollment for responders at the Pentagon and Shanksville sites may be implemented as soon as possible.

Moreover, the rulemaking will implement statutory changes required by the 2024 NDAA, expanding eligibility as provided by statutory changes without exercising discretion or otherwise interpreting statutory provisions. As described above, the 2024 NDAA established new criteria for responders to the September 11, 2001, terrorist attacks at the Pentagon and in Shanksville, Pennsylvania. The NDAA also established definitions for the terms *Federal agency* and *uniformed services*. Finally, the NDAA included a numerical limit of 500 members on Pentagon and Shanksville responders enrolled under the new eligibility criteria. In this rulemaking, the new statutory criteria for Pentagon and Shanksville responders are added to part 88 as are the definitions of the terms *Federal agency* and *uniformed services*. Similarly, the statutory cap of 500 Pentagon and Shanksville members is also added to part 88. This rulemaking does not deviate from language in the 2024 NDAA.

Under the Administrative Procedure Act (APA), prior notice and comment on a rulemaking may be dispensed with if there is good cause to believe that such

procedures would be “impracticable, unnecessary, or contrary to the public interest.”¹¹ In this case, the agency believes there is good cause to waive prior public participation because such procedures are largely unnecessary and would be contrary to the public interest in expanding services to certain responders to the September 11, 2001, terrorist attacks.

The rulemaking will implement statutory changes required by the 2024 NDAA and opposition to the expanded eligibility requirements is not anticipated. The 2024 NDAA signed into law included language expanding eligibility for the WTC Health Program to additional responders at the Pentagon and Shanksville sites. The newly eligible responders include employees of DOD or other Federal agencies, certain DOD and Federal agency contractors, and regular or reserve members of the uniformed services. Specifically, the NDAA provided additional eligibility for:

[A]n employee of the Department of Defense or any other Federal agency, worked during the period beginning on September 11, 2001, and ending on September 18, 2001, for a contractor of the Department of Defense or any other Federal agency, or was a member of a regular or reserve component of the uniformed services; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site of the terrorist-related aircraft crash of September 11, 2001, during the period beginning on September 11, 2001, and ending on the date on which the cleanup of the site was concluded, as determined by the WTC Program Administrator; or

[A]n employee of the Department of Defense or any other Federal agency, worked during the period beginning on September 11, 2001, and ending on September 18, 2001, for a contractor of the Department of Defense or any other Federal agency, or was a member of a regular or reserve component of the uniformed services; and performed rescue, recovery, demolition, debris cleanup, or other related services at the Shanksville, Pennsylvania, site of the terrorist-related aircraft crash of September 11, 2001, during the period beginning on September 11, 2001, and ending on the date on which the cleanup of the site was concluded, as determined by the WTC Program Administrator.¹²

¹¹ 5 U.S.C. 553(b)(B). Courts differ on whether the good cause standard for waiving notice and comment announced in sec. 553(b)(B) of the APA is the same standard that should be applied in waiving the 30-day publication rule in sec. 553(d). See Cole JP [Jan 2016], *The Good Cause Exception to Notice and Comment Rulemaking: Judicial Review of Agency Action*, Congressional Research Service, No. R44356 at 3–4 (noting that some courts have indicated that these are two distinct standards and that the test for good cause to waive notice and comment is more stringent than that used to waive the 30-day rule).

¹² Public Law 118–31, div. A, title XVIII, 1851; 137 Stat. 706, 708.

The NDAA also caps the number of new Pentagon and Shanksville responders at 500. The rulemaking will only implement statutory changes enacted by the NDAA, expanding eligibility as provided by statutory changes without exercising discretion or otherwise interpreting statutory provisions. As described above, the rulemaking would add categories of DOD and other Federal employees and contractors and uniformed service members who may be eligible for the WTC Health Program and also incorporate the statutory limit on the number of additional responders who would be eligible. There is no deviation or addition from the statutory language in the regulatory text.

It would be contrary to the public interest to delay any longer than necessary these individuals' eligibility for treatment of health conditions that are found to be related to their 9/11 response activities. Postponement of the implementation of the new eligibility criteria could result in harm to Pentagon and Shanksville responders currently coping with one or more health conditions covered by the WTC Health Program or who are at risk for developing such a condition. Thus, notice and comment procedures should be waived in the interest of protecting the health of these responders and allowing them to apply for enrollment in the WTC Health Program as soon as possible. No opposition to the expanded eligibility requirements is anticipated and the agency will not be exercising any discretion in further defining certain employees who may be eligible for the Program or clarifying any additional limits on the number of individuals from these categories who would be eligible. The 2024 NDAA established a new and distinct fund to specifically pay for medical monitoring and treatment for this new group of responders,¹³ thereby accounting for the anticipated costs associated with the expansion. Because this interim final rule does not seek to deviate from the 2024 NDAA language and because no opposition to this rulemaking is expected, the agency finds that notice-and-comment rulemaking is unnecessary and contrary to the public interest.

The APA also requires the publication of a rule "not less than 30 days before its effective date," unless the agency finds and publishes with the rule good cause for such exception.¹⁴ The same standard for establishing "good cause" applies to both excepting a rulemaking from notice and comment requirements

and excepting a rulemaking from the 30-day post-publication effective date requirement. The "impracticable" and "contrary to the public interest" prongs of the good-cause exemption are also satisfied here with respect to waiving the requirement for a 30-day post-publication effective date. As elaborated further below, the typical delayed effective date would defer the agency's ability to provide life-saving treatment and result in less favorable outcomes and survival rates for covered individuals. The agency expects that Program members who have certified WTC-related health conditions experience better treatment outcomes with Program physicians as compared with receiving care outside of the Program, because of the expertise of Program physicians. Moreover, while other insurance plans may require deductibles and copays, which impact access to timely care, WTC Health Program members have first-dollar coverage and thus may seek care sooner, resulting in improved treatment outcomes. Additionally, the "unnecessary" prong of the good-cause exemption is satisfied because the enactment of the 2024 NDAA provided interested parties notice of the changes to the eligibility criteria; thus, a delayed effective date is not needed to allow interested parties to ready for implementation of the rule.

The purpose of the typical post-publication waiting period is to give affected parties time to adjust their behavior before the final rule takes effect. In this instance, however, the affected parties are prospective members of the WTC Health Program who have waited decades for medical monitoring and treatment of their WTC-related health conditions. The Program anticipates that many prospective members will submit applications for enrollment as soon as this rule is effective. Such prospective members are already on notice of the statutory changes enacted in the 2024 NDAA, and this regulation implements such statutory changes without exercising discretion or otherwise interpreting statutory provisions. Thus, such prospective members do not require an additional 30 days to ready themselves for implementation of this rule. Indeed, any delay in effective date could result in postponed medical care for such members or require them to pay out of pocket for care in the interim. Delayed implementation of the expanded eligibility criteria could result in real harm to Pentagon and Shanksville responders currently coping with one or more health conditions covered by the

WTC Health Program or who are at risk for developing such conditions. It is in these prospective members' best interest that they receive treatment for their WTC-related health conditions as soon as possible. Thus, the 30-day post-publication effective date is waived for the benefit of these responders to allow them to apply for enrollment in the WTC Health Program as soon as possible.

Moreover, the WTC Health Program does not require additional time to prepare for the implementation of this rule. As such, there is no public interest served in further delaying the effective date of this rulemaking. Public comments on the interim final rule will be considered by the Administrator and the regulatory text may be modified, as necessary.

Because it would be contrary to the public interest to delay any longer than necessary these individuals' eligibility for treatment of health conditions that are found to be related to their 9/11 response activities, the Administrator of the WTC Health Program and the HHS Secretary find that good cause exists to waive the notice and comment requirement and make this rulemaking effective immediately on publication. Public comments on the interim final rule will be considered by HHS and the Administrator prior to issuance of a final rule and the regulatory text may be modified to address comments, as necessary. Issuance of a final rule will be noticed in the **Federal Register**.

III. Summary of Final Rule

With this rulemaking, 42 CFR part 88 is amended as described below.

Authority Citation

The authority citation for 42 CFR part 88 is updated to reflect recent amendments to Title I of the Zadroga Act (Pub. L. 111–347, as amended by Pub. L. 114–113, Pub. L. 116–59, Pub. L. 117–328, and Pub. L. 118–31). The statutory citation now reads 42 U.S.C. 300mm–300mm–64.

Section 88.1 Definitions

The statutory definitions of the terms *Federal agency* and *uniformed services* are added to the existing Definitions section, 42 CFR 88.1. In the existing definitions of *Act* and *WTC Health Program*, the statutory authority is updated to reflect recent amendments to the Zadroga Act.

Section 88.4 Eligibility Criteria—WTC Responders

The existing Pentagon responder eligibility criteria in 42 CFR 88.4(b) are modified to include the new statutory

¹³ 42 U.S.C. 300mm–64.

¹⁴ 5 U.S.C. 553(d).

criteria for the three new classes of eligible responders at the Pentagon site. For clarity, the existing language in paragraph (b)(1) is broken into new paragraphs, designated (b)(1)(i) through (iii). New paragraph (b)(1)(iv) identifies employees of the DOD or any other Federal agency; paragraph (b)(1)(v) identifies employees of DOD contractors or other Federal agency contractors who worked during the period beginning on September 11, 2001, and ending on September 18, 2001; and paragraph (b)(1)(vi) identifies members of regular and reserve components of the uniformed services. Language in existing § 88.4(b)(2) describing eligible response activities, time periods, and duration of work is split into two paragraphs, resulting in a new paragraph (b)(3).

The existing Shanksville, Pennsylvania responder eligibility criteria in § 88.4(c) are also revised to add the new statutory criteria for the three new classes of eligible responders at the Shanksville, Pennsylvania site. For clarity, the existing language in paragraph (c)(1) is broken into new paragraphs, designated (c)(1)(i) through (iii). New paragraph (c)(1)(iv) identifies employees of the DOD or any other Federal agency; paragraph (c)(1)(v) identifies employees of DOD contractors or other Federal agency contractors who worked during the period beginning on September 11, 2001, and ending on September 18, 2001; and paragraph (c)(1)(vi) identifies members of regular and reserve components of the uniformed services. Language in existing paragraph (c)(2) describing eligible response activities, time periods, and duration of work is split into two paragraphs, resulting in a new paragraph (c)(3).

Section 88.6 Enrollment Decision—WTC Responders

In 42 CFR 88.6, existing paragraph (c) establishes conditions under which the WTC Health Program may deny enrollment of responders. In paragraph (c)(2)(i), the numerical limit on new WTC responder enrollment is replaced with new language indicating that this limit is established in the Zadroga Act, as amended. Language in paragraph (c)(2)(i) describing the Administrator's discretion regarding whether to close Program enrollment in the event that sufficient funds are not available to enroll new members is moved to a new paragraph (c)(2)(iii) without change. New text in paragraph (c)(2)(ii) reflects the new statutory limit of 500 total WTC responders who may be enrolled pursuant to the expanded Pentagon and Shanksville, Pennsylvania eligibility

criteria in §§ 88.4(b)(1)(iv) through (vi) and 88.4(c)(1)(iv) through (vi), respectively.

Section 88.12 Enrollment Decision—Certified-Eligible Survivors

In 42 CFR 88.12, existing paragraph (b)(3) establishes conditions under which the WTC Health Program may deny certified-eligible survivor status. The numerical limit in paragraph (b)(3)(i) is replaced with new language indicating that the limit on certified-eligible survivor enrollment is specified in the Zadroga Act, as amended. Language in existing paragraph (b)(3)(i), describing the Administrator's discretion regarding whether to close Program enrollment in the event that sufficient funds are not available to enroll new members, is moved to a new paragraph (b)(3)(ii) without change.

IV. Regulatory Impact Analysis

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

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 14094 entitled “Modernizing Regulatory Review” amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) having an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising legal or policy issues for which

centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case. A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) (\$200 million or more in any 1 year).

This interim final rule has been determined not to be a significant regulatory action under section 3(f)(1) of Executive Order 12866 and does not meet the criteria set forth in 5 U.S.C. 804(2) under subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). This rulemaking expands the existing eligibility criteria for the enrollment of Pentagon and Shanksville responders to also include employees of the DOD or any other Federal agency, certain DOD and Federal agency contractors, and regular or reserve members of the uniformed services who meet the activity, location, and time criteria specified in the statutory amendments. The rulemaking implements the statutory cap of 500 on the total number of Pentagon and Shanksville responders enrolled under those expanded criteria.

The 2024 NDAA allows for the addition of up to 500 new Program members to be enrolled under the expanded eligibility criteria for individuals who responded to the September 11, 2001, terrorist attack sites at the Pentagon in Arlington, Virginia, and in Shanksville, Pennsylvania, pursuant to 42 U.S.C. 300mm–21(a)(4)(A)(ii). In accordance with sec. 300mm–64(c)(1), costs associated with carrying out medical monitoring, diagnostics, screening, and treatment, including non-pharmacy and pharmacy costs, for the 500 new members are to be paid out of a newly established World Trade Center Health Program Fund for Certain WTC Responders at the Pentagon and Shanksville, Pennsylvania. For that reason, this analysis accounts only for those costs associated with medical monitoring, diagnostics, screening, and non-pharmacy treatment (medical costs) and pharmacy costs; WTC Health Program administrative costs are not included in the analysis.

Historical WTC Health Program claims data were used to project the costs associated with the future enrollment of 500 potential new Pentagon and Shanksville responder members under the expanded eligibility criteria. These historical data account for variables including an aging member

population, healthcare utilization, comorbidities, and inflation; incorporation of these variables results in projected per-member costs increasing year-over-year.

This analysis started from the premise that all 500 future Pentagon and Shanksville members will enroll in the Program within 5 years of this

rulemaking. To estimate the rate of enrollment over 5 years, this analysis further assumed that fiscal year (FY) 2024 enrollment will be relatively low, given the timing of this rulemaking. New enrollments could peak in the first and second full fiscal years (FY2025/2026 if enrollment starts in FY2024) and likely level off in later years. Given

these assumptions, the new enrollments for this group were estimated for each fiscal year from FY2024 through FY2028; after the FY2024 estimate, each subsequent annual estimate was then added to the enrollment from the prior fiscal year to estimate the total number of members in the expanded eligibility category for each fiscal year in table 1.

TABLE 1—PROJECTED ANNUAL NEW PENTAGON AND SHANKSVILLE RESPONDER ENROLLMENTS UNDER EXPANDED ELIGIBILITY CRITERIA, FY2024–2028

FY	Projected new enrollment	Cumulative new enrollment
2024	30	30
2025	150	180
2026	120	300
2027	100	400
2028	100	500
Total	500	.....

The Program next estimated the future annual medical and pharmacy costs associated with 500 new Pentagon and Shanksville responder members enrolled over 5 years, from FY2024 through FY2028. This analysis assumed that individuals enrolled under the expanded eligibility criteria would have similar average medical costs and

pharmacy costs as Pentagon and Shanksville responders enrolled under the current eligibility criteria. This analysis does not include administrative costs associated with the addition of future members.

To estimate the future costs associated with the enrollment of 500 new members, this analysis first found the average per-member medical costs,

pharmacy costs, and total costs for Pentagon and Shanksville responders enrolled under the current eligibility criteria. To do so, first, future enrollment and annual medical costs, pharmacy costs, and total costs were projected for the current Pentagon and Shanksville responders through FY2028. See table 2.

TABLE 2—PROJECTED ENROLLMENT AND ASSOCIATED MEDICAL AND PHARMACY COSTS FOR CURRENT PENTAGON AND SHANKSVILLE RESPONDERS, FY2024–2028
[2024\$]

FY	Total projected number of Pentagon/Shanksville responders, current eligibility criteria	Projected total medical costs	Projected total pharmacy costs	Total projected costs
2024	1,391	\$3,061,444	\$1,722,479	\$4,783,923
2025	1,513	3,547,280	1,966,896	5,514,176
2026	1,636	4,033,115	2,211,313	6,244,428
2027	1,758	4,518,950	2,455,731	6,974,681
2028	1,880	5,004,785	2,700,148	7,704,933
Total .....	.....	20,165,574	11,056,567	31,222,141

Next, the projected medical costs and projected pharmacy costs were divided by the projected number of Pentagon and Shanksville responder members under the current eligibility criteria

(table 2) to calculate the estimated average per member medical costs and pharmacy costs for each projected year from FY2024 through FY2028. The total cost per member was then calculated by

summing the per member medical and pharmacy costs for each fiscal year. See table 3.

TABLE 3—PROJECTED MEDICAL AND PHARMACY COSTS PER CURRENT PENTAGON AND SHANKSVILLE RESPONDER MEMBER, FY2024–2028
[2024\$]

FY	Projected medical costs per member	Projected pharmacy costs per member	Total projected cost per member
2024	\$2,201	\$1,238	\$3,439

TABLE 3—PROJECTED MEDICAL AND PHARMACY COSTS PER CURRENT PENTAGON AND SHANKSVILLE RESPONDER MEMBER, FY2024–2028—Continued
[2024\$]

FY	Projected medical costs per member	Projected pharmacy costs per member	Total projected cost per member
2025	2,345	1,300	3,645
2026	2,465	1,352	3,817
2027	2,571	1,397	3,968
2028	2,662	1,436	4,098

Next, the projected medical costs and pharmacy costs for new Pentagon and Shanksville responders were calculated for FY2024 through FY2028 by multiplying the predicted costs per current Pentagon and Shanksville

responder for each fiscal year from table 3 by the projected cumulative number of new members enrolled under the expanded eligibility criteria for each fiscal year from table 1. The analysis concluded that the projected medical

and pharmacy costs for 500 Pentagon and Shanksville responders enrolled under the expanded eligibility criteria will be \$5,540,570 (undiscounted) over 5 years. See table 4.

TABLE 4—PROJECTED MEDICAL AND PHARMACY COSTS, NEW PENTAGON AND SHANKSVILLE RESPONDERS UNDER EXPANDED ELIGIBILITY CRITERIA, FY2024–2028
[2024\$]

FY	Projected cumulative new enrollment	Projected medical costs for cohort	Projected pharmacy cost for cohort	Projected total cost for cohort
2024	30	\$66,030	\$37,140	\$103,170
2025	180	422,100	234,000	656,100
2026	300	739,500	405,600	1,145,100
2027	400	1,028,400	558,800	1,587,200
2028	500	1,331,000	718,000	2,049,000
Total		3,587,030	1,953,540	5,540,570

The total projected costs associated with the expansion of the Pentagon and Shanksville eligibility criteria for each fiscal year, from table 4, were discounted at the 2 percent rate to reflect changes in the valuation of the impacts of this rulemaking across time. In table 5, the total medical and

pharmacy costs were projected to be between \$5,132,395 (discounted at 2%) and \$5,540,570 (undiscounted) over 5 years. The discounted and undiscounted 5-year totals were divided by 5 to find the projected average annual costs from \$1,026,479 (discounted at 2%) to \$1,108,144

(undiscounted). The projected total medical and pharmacy costs described here may be overstated if the total number of Pentagon and Shanksville responders enrolled pursuant to the expanded eligibility criteria is fewer than 500 members.

TABLE 5—TOTAL PROJECTED MEDICAL AND PHARMACY COSTS, NEW PENTAGON AND SHANKSVILLE RESPONDERS UNDER EXPANDED ELIGIBILITY CRITERIA, FY2024–2028
[2024\$]

FY	Undiscounted	Discounted 2%
2024	\$103,170	
2025	656,100	\$643,240
2026	1,145,100	1,100,670
2027	1,587,200	1,495,619
2028	2,049,000	1,892,866
Total	5,540,570	5,132,395
Annualized	1,108,144	1,026,479

Since the implementation of provisions of the Patient Protection and Affordable Care Act on January 1, 2014, all WTC Health Program members and future members are assumed to have or have had access to medical insurance coverage other than through the WTC

Health Program.¹⁵ Therefore, all medical and pharmacy costs to be paid

by the WTC Health Program from 2024 through 2028 are considered transfers. Benefits

¹⁵ 42 U.S.C. 300mm–41(c)(3) requires WTC Health Program members to maintain minimum essential insurance coverage.

The Administrator of the WTC Health Program does not have information on the health of the population that may

have experienced 9/11 exposures and is not currently enrolled in the WTC Health Program. In addition, the Administrator has only limited information about health insurance and healthcare services available for WTC-related health conditions potentially caused by 9/11 exposures and suffered by any population of responders and survivors who are not currently enrolled. For the purposes of this analysis, the Administrator assumed that all unenrolled responders and survivors are now covered by health insurance due to access provided by the Patient Protection and Affordable Care Act and may be receiving treatment outside the WTC Health Program.

Although the Administrator cannot quantify the benefits associated with the WTC Health Program, members with certified WTC-related health conditions are expected to experience better treatment outcomes with WTC Health Program providers as compared to receiving care outside of the WTC Health Program. A recent study found that firefighters who responded to the September 11, 2001, terrorist attacks, have lower mortality rates compared with firefighters who were not 9/11-exposed. The authors attributed that finding, in part, to the level of care, including comprehensive health monitoring and treatment, provided to WTC Health Program members.¹⁶ Moreover, under other insurance plans, patients would likely have deductibles and copays, which impact access to care and, particularly, its timeliness.¹⁷ WTC Health Program members have first-dollar coverage and hence are likely to seek care sooner, when indicated, resulting in improved treatment outcomes.

Limitations

The analysis presented here was limited by the dearth of verifiable data on the health status of responders and survivors who have yet to apply for enrollment in the WTC Health Program. Because of the limited data, the Administrator is not able to estimate benefits in terms of averted healthcare costs; nor is the Administrator able to estimate indirect costs, such as averted absenteeism, short- and long-term disability, and productivity losses averted due to premature mortality.

Alternatives

The sole alternative to adding the new statutory enrollment eligibility criteria to the regulations in 42 CFR part 88 is to not add the criteria. In the instant case, neither the Administrator of the WTC Health Program nor the HHS Secretary have discretion in this matter because Congress has directed the specific regulatory outcome—the addition of up to 500 new Pentagon and Shanksville responders—in the 2024 NDAA amendments. Without conducting rulemaking, even though the statutory language establishes expanded eligibility criteria for the enrollment of new Pentagon and Shanksville responders, these individuals would not fall within the scope of the WTC Health Program regulations in 42 CFR part 88. Without eligibility criteria specified in part 88, these individuals could not be enrolled as members in the Program and would not be subject to Program regulations and policies.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations. Section 605 of U.S.C. title 5 allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The Secretary certifies that this interim final rule has “no significant economic impact upon a substantial number of small entities” within the meaning of the RFA.

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, requires an agency to invite public comment on, and to obtain Office of Management and Budget (OMB) approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. OMB has already approved the information collection and recordkeeping requirements in OMB Control Number 0920–0891, *World Trade Center Health Program Enrollment, Petitions, Designated Representative/HIPAA Authorization, and Member Satisfaction*

(expiration date September 30, 2025). To account for increases in responses and burden associated with this rulemaking without delay, HHS is requesting emergency review and clearance for the updating of the WTC Health Program Pentagon and Shanksville, Pennsylvania, responders’ enrollment application form. A description of the relevant regulatory provision is given below with an estimate of the annual reporting burden. Included in the estimate of the annual reporting burden is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. In compliance with the requirement of 44 U.S.C. 3506(c)(2)(A) for opportunity for public comment on proposed data collection projects, written comments are encouraged on this information collection. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, you may call 404–639–5960; send comments to Jeffrey M. Zirger, 1600 Clifton Road, MS–H21, Atlanta, GA 30333; or send an email to omb@cdc.gov.

Comments are invited on the following: (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) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents. Written comments should be received within 30 days of the publication of this document.

This interim final rule allows the WTC Health Program to extend membership to individuals who meet the expanded eligibility criteria codified in 42 CFR 88.4 by this rulemaking. The Program has revised the existing Pentagon/Shanksville eligibility application to include the expanded criteria and is increasing the burden in the approved collection of information to account for up to 500 additional enrollment applications. This emergency information collection request is for 250 annual burden hours.

¹⁶ Singh A, Zeig-Owens R, Cannon M, Webber MP, Goldfarb DG, Daniels RD, Prezant DJ, Boffetta P, Hall CB [2023], *All-Cause and Cause-Specific Mortality in a Cohort of WTC-Exposed and Non-*

WTC-Exposed Firefighters, *Occup Environ Med* 0:1–7.

¹⁷ Wharam JF, Galbraith AA, Kleinman KP, Soumerai SB, Ross-Degnan D, Landon BE [2008],

Cancer Screening before and after Switching to a High-Deductible Health Plan, *Ann Intern Med* 148(9):647–655.

Section	Title	Number of respondents	Average responses per respondent	Average burden per response (hr)	Total burden (hr)
§ 88.4	World Trade Center Health Program Pentagon/Shanksville Responder Application for Enrollment.	500	1	0.5	250

The agency will submit the adjustment in burden for OMB Control No. 0920–0891 to OMB for its emergency review and approval.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and on the private sector “other than to the extent that such regulations incorporate requirements specifically set forth in law.” Section 202 of U.S.C. title 2 also requires that agencies 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. In 2024, that threshold is approximately \$183 million. This interim final rule does not mandate any requirements for State, local, or Tribal governments, or for the private sector, and this rule does not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$183 million in any 1 year.

E. Executive Order 12988 (Civil Justice Reform)

This interim final rule has been drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. This interim final rule has been reviewed carefully to eliminate drafting errors and ambiguities.

F. Executive Order 13132 (Federalism)

HHS has reviewed this interim final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have “federalism implications.” The rule does 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.”

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

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this interim final rule on children. HHS has determined that the interim final rule has no environmental health and safety effect on children.

H. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, HHS has evaluated the effects of this interim final rule on energy supply, distribution, or use, and has determined that the rule will not have a significant adverse effect.

I. Plain Writing Act of 2010

Under the Plain Writing Act of 2010, 5 U.S.C. 301 note, executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in issuing this rulemaking consistent with the Federal Plain Writing Act guidelines but notes that these standards are technical in nature.

List of Subjects in 42 CFR Part 88

Aerodigestive disorders, Appeal procedures, Cancer, Eligibility criteria, Health care, Mental health conditions, Musculoskeletal disorders, Respiratory and pulmonary diseases, World Trade Center.

For the reasons discussed in the preamble, the Administrator and HHS Secretary amend 42 CFR part 88 as follows:

PART 88—WORLD TRADE CENTER HEALTH PROGRAM

■ 1. The authority citation for part 88 is revised to read as follows:

Authority: 42 U.S.C. 300mm to 300mm–64.

■ 2. Amend § 88.1 by:

- a. Revising the definition for “Act”;
- b. Adding the definitions for “Federal agency” and “Uniformed services” in alphabetical order; and

■ c. Revising the definition for “WTC Health Program”.

The revisions and additions read as follows:

§ 88.1 Definitions.

Act means Title XXXIII of the Public Health Service Act, as amended, 42 U.S.C. 300mm through 300mm–64 (codifying Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. 111–347, as amended by Pub. L. 114–113, Pub. L. 116–59, Pub. L. 117–328, and Pub. L. 118–31), which created the World Trade Center (WTC) Health Program.

* * * * *

Federal agency means an agency, office, or other establishment in the executive, legislative, or judicial branch of the Federal Government.

* * * * *

Uniformed services means the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

* * * * *

WTC Health Program means the program established by Title XXXIII of the Public Health Service Act, as amended, 42 U.S.C. 300mm to 300mm–64 (codifying Title I of the James Zadroga 9/11 Health and Compensation Act of 2010, Pub. L. 111–347, as amended by Pub. L. 114–113, Pub. L. 116–59, Pub. L. 117–328, and Pub. L. 118–31) to provide medical monitoring and treatment benefits for eligible responders to the September 11, 2001, terrorist attacks and initial health evaluation, monitoring, and treatment benefits for residents and other building occupants and area workers in New York City who were directly impacted and adversely affected by such attacks.

* * * * *

■ 3. Amend § 88.4, by revising paragraphs (b) and (c) to read as follows:

§ 88.4 Eligibility criteria—WTC responders.

* * * * *

(b) Responders to the Pentagon site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program. Individuals must meet the criteria in paragraphs (b)(1) through (3) of this section to be considered eligible for enrollment.

(1) The individual was one of the following:

(i) An active or retired member of a fire or police department (fire or emergency personnel);

(ii) Worked for a recovery or cleanup contractor;

(iii) A volunteer;

(iv) An employee of the Department of Defense or any other Federal agency;

(v) Worked for a contractor of the Department of Defense or any other Federal agency during the period beginning on September 11, 2001, and ending on September 18, 2001; or

(vi) A member of a regular or reserve component of the uniformed services;

(2) The individual performed rescue, recovery, demolition, debris cleanup, or other related services at the Pentagon site of the September 11, 2001, terrorist attacks; and

(3) The individual performed the activities in paragraph (b)(2) of this section for at least 1 day beginning September 11, 2001, and ending on November 19, 2001.

(c) Responders to the Shanksville, Pennsylvania site of the September 11, 2001, terrorist attacks, may apply for enrollment in the WTC Health Program. Individuals must meet the criteria in paragraphs (c)(1) through (3) of this section to be considered eligible for enrollment:

(1) The individual was one of the following:

(i) An active or retired member of a fire or police department (fire or emergency personnel);

(ii) Worked for a recovery or cleanup contractor;

(iii) A volunteer;

(iv) An employee of the Department of Defense or any other Federal agency;

(v) Worked for a contractor of the Department of Defense or any other Federal agency during the period beginning on September 11, 2001, and ending on September 18, 2001; or

(vi) A member of a regular or reserve component of the uniformed services;

(2) The individual performed rescue, recovery, demolition, debris cleanup, or other related services at the Shanksville, Pennsylvania site of the September 11, 2001, terrorist attacks; and

(3) The individual performed the activities in paragraph (c)(2) of this section for at least 1 day beginning September 11, 2001, and ending on October 3, 2001.

* * * * *

■ 4. Amend § 88.6, by revising paragraph (c)(2) to read as follows:

§ 88.6 Enrollment decision—WTC responders.

* * * * *

(c) * * *

(2) The WTC Health Program may deny enrollment of a responder who is otherwise eligible and qualified if the Act's numerical limitations for newly enrolled responders have been met.

(i) No more than the number of WTC responders specified in the Act, as amended, other than those enrolled pursuant to §§ 88.3, 88.4(a)(1)(ii), 88.4(b)(1)(iv) through (vi), and 88.4(c)(1)(iv) through (vi), may be enrolled at any time.

(ii) No more than 500 WTC responders meeting the eligibility criteria in §§ 88.4(b)(1)(iv) through (vi) and 88.4(c)(1)(iv) through (vi) may be enrolled at any time.

(iii) The Administrator of the WTC Health Program may decide, based on the best available evidence, that sufficient funds are available under the Act to provide treatment and monitoring only for individuals who are already enrolled as WTC responders at that time.

* * * * *

■ 5. Amend § 88.12, by revising paragraphs (b) introductory text and (b)(3) to read as follows:

§ 88.12 Enrollment decision—certified-eligible survivors.

* * * * *

(b) The WTC Health Program will review the physician's determination, render a decision regarding certification of the individual's WTC-related health condition, and notify the individual of the decision and the reason for the decision in writing, pursuant to §§ 88.17 and 88.18.

* * * * *

(3) The WTC Health Program may deny certified-eligible survivor status of an otherwise eligible and qualified screening-eligible survivor if the Act's numerical limitations for certified-eligible survivors have been met.

(i) No more than the number of individuals specified in the Act, as amended, other than those described in § 88.7, may be determined to be certified-eligible survivors at any time.

(ii) The Administrator of the WTC Health Program may decide, based on the best available evidence, that sufficient funds are available under the Act to provide treatment and monitoring only for individuals who have already

been certified as certified-eligible survivors at that time.

* * * * *

John J. Howard,

Administrator, World Trade Center Health Program and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–20540 Filed 9–10–24; 8:45 am]

BILLING CODE 4165–18–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 16–155; FCC 20–133; FR ID 243431]

Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) announces that the Office of Management and Budget (OMB) has approved revisions to the information collection requirements under OMB Control Number 3060–0989, as associated with additional requirements added in FCC 20–133, adopted September 30, 2020, to section 63.04(a)(4)(i) and (ii) of the Commission's rules for carrier applicants seeking domestic section 214 authorization to transfer control. Pursuant to section 63.04(a)(4)(i) and (ii), applicants must specify the pre-transaction and post-transaction direct and indirect equity and voting interests of any persons or entity owning 10 percent or more of the applicants, as well as provide an ownership diagram that illustrates the applicant's vertical ownership structure.

DATES: The amendments to 47 CFR 63.04(a)(4)(i) and (ii), published at 85 FR 76360 on November 27, 2020, are effective on September 11, 2024

FOR FURTHER INFORMATION CONTACT: Randall Sifers, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2325 or email: Randall.Sifers@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at

(202) 418–2991 or Nicole. Ongele@fcc.gov.

SUPPLEMENTARY INFORMATION: On November 3, 2022, OMB approved, for a period of three years, the information collection requirements in 47 CFR 63.04(a)(4)(i) and (ii). These rule sections were adopted in the Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership, Report and Order, FCC 20–133. The full text of this document is available on the Commission’s website at <https://docs.fcc.gov/public/attachments/FCC-20-133A1.pdf>. The Commission publishes this document as an announcement of the effective date for these amended rules.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number 3060–0989 in your correspondence. The Commission also will accept your comments via email at PRA@fcc.gov. 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), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received final OMB approval on November 3, 2022 for the information collection requirements contained in the modifications to the Commission’s rules for filing procedures for domestic transfer of control applications in 47 CFR 63.04(a)(4).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number for the information collection requirements in 47 CFR 63.04 (a)(4)(i) and (ii) is 3060–0989.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0989.

OMB Approval Date: November 03, 2022.

OMB Expiration Date: November 30, 2025.

Title: Sections 63.01, 63.03, and 63.04, Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control.

Form Number: N/A.

Type of Review: Revision of currently-approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 92 respondents; 92 responses.

Estimated Time per Response: 11 hours.

Frequency of Response: On-occasion reporting requirement.

Obligation to Respond: Mandatory. The statutory authority for part 63 of this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 155, 303(r), and 309.

Total Annual Burden: 1,201 hours.

Total Annual Cost: \$107,925.

Needs and Uses: On September 30, 2020, the Commission adopted a Report and Order (released on October 1, 2020) to reduce the need for supplemental requests and to ensure expeditious processing of applications by adding the requirements in section 63.04(a)(4) for carrier applicants seeking domestic section 214 authorization to transfer control to specify the pre-transaction and post-transaction direct and indirect equity and voting interests of any persons or entity owning 10 percent or more of the applicants, as well as provide an ownership diagram that illustrates the applicant’s vertical ownership structure.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–20535 Filed 9–10–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 240506–0128]

RTID 0648–XE279

Pacific Halibut Fisheries of the West Coast; Inseason Action for the 2024 Area 2A Pacific Halibut Directed Commercial Fishery

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS announces inseason action for the 2024 Pacific halibut non-Tribal directed commercial fishery in the International Pacific Halibut Commission’s (IPHC) regulatory Area 2A. This action adds a fishing period, September 24 through September 26, 2024, with a fishing period catch limit of 1,800 pounds (0.82 metric tons (mt)) per vessel, dressed weight. This action is intended to provide opportunity to achieve the 2024 non-Tribal directed commercial fishery allocation.

DATES: Effective September 24, 2024, through December 7, 2024.

FOR FURTHER INFORMATION CONTACT: Heather Fitch, West Coast Region, NMFS, (360) 320–6549, heather.fitch@noaa.gov.

SUPPLEMENTARY INFORMATION: On May 10, 2024, NMFS published a final rule implementing fishing periods (*i.e.* season dates) and fishing period limits (*i.e.* catch limits), by vessel size class, for the IPHC Area 2A Pacific halibut non-Tribal directed commercial fishery that operates south of Point Chehalis, WA (lat. 46°53.30’ N) (89 FR 40417). The Area 2A non-Tribal directed commercial fishery allocation is 249,338 pounds (113 mt), net weight (*i.e.*, the weight of Pacific halibut that is without gills and entrails, head-off, washed, and without ice and slime) (89 FR 19275, March 18, 2024).

The initial fishing periods occurred on June 25–27 and July 9–11, 2024, with fishing period limits ranging from 1,800 pounds to 4,500 pounds (0.816 mt to 2.041 mt), dressed weight, varied by vessel size class. A third fishing period occurred on August 6–8, 2024, with a fishing period limit of 1,000 pounds (0.45 mt), dressed weight, for all vessel size classes and a fourth fishing period occurred on August 27–29, 2024, with a

fishing period limit of 1,400 pounds (0.82 mt). Landings information to date indicates that sufficient allocation remains to warrant an additional fishing period. Approximately 221,750 pounds (100.6 mt), net weight, have been harvested of the 249,338-pound (113 mt) allocation (89 percent), leaving 27,588 pounds (12.5 mt) remaining (11 percent).

NMFS is adopting an additional fishing period not previously implemented in the final rule on May 10, 2024 (89 FR 40417), in accordance with 50 CFR 300.63(e)(1)(iii). Fishing period limits implemented through inseason action are equal across vessel size classes and are based on the allocation estimated to be remaining and the projected participation and catch rates in this additional fishing period.

NMFS has determined the following inseason action is necessary to meet the management objective of attaining the allocation, is not anticipated to risk exceeding the allocation, and is consistent with the inseason management provisions allowing for additional fishing periods.

Inseason Action

This inseason action implements an additional fishing period, beginning September 24, 2024 at 8 a.m. and ending on September 26, 2024 at 6 p.m. This inseason action also implements a fishing period catch limit of 1,800 pounds (0.82 mt) per vessel, dressed weight (head-on, with ice and slime), for all vessel size classes.

Notice of this additional fishing period and fishing period limit will also be announced on the NMFS hotline at 206-526-6667 or 800-662-9825.

Classification

NMFS issues this action pursuant to the Northern Pacific Halibut Act of 1982. This action is taken under the regulatory authority at 50 CFR 300.63(e)(1)(iii), 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. The California, Oregon, and Washington Departments of Fish and Wildlife provided estimated harvest data to NMFS inseason. As of September 4, 2024, the Area 2A non-Tribal directed commercial fishery had caught only an estimated 89 percent of the fishery allocation. NMFS uses current fishery harvest and participation estimates, and fishing period catches from prior years, to determine if additional fishing periods are necessary to reach the allocation, and to set fishing period limits for those additional fishing periods. Given that harvest in the first four fishing periods is estimated to be well below the allocation, a fifth fishing period is considered necessary to maximize commercial fishing opportunity to attain the allocation. This action should be implemented as soon as possible for fishery participants to plan for the additional fishing. This fishery has historically had 2 weeks between fishing periods, or as close to 2 weeks between them as is practicable. The fishery may close no later than December 7, 2024 (89 FR 19275, March 18, 2024). As such, implementing this action through proposed and final rulemaking would limit the benefit this action would provide to fishery participants. Without implementation of an additional fishing period, the fishery allocation is unlikely to be reached, limiting economic benefits to the participants and not meeting the goals of the Catch Sharing Plan. It is necessary that this action be implemented in a timely manner so that planning for the additional fishing period can take place, and for business decision making by the regulated public impacted by this action, which includes commercial fishing operations and associated port businesses, among others. To ensure the regulated public is fully aware of this action, notice of this regulatory action

will also be provided to fishery participants through a telephone hotline, and via email news release. No aspect of this action is controversial, and changes of this nature were anticipated in the process described in regulations at 50 CFR 300.63(e)(1)(iii) and in the final rule (89 FR 40417, May 10, 2024).

For the reasons discussed above, there is also good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after date of publication, as a delay in effectiveness of this action would constrain fishing opportunity and be inconsistent with the goals of the Catch Sharing Plan, as well as potentially limit the economic opportunity intended by this rule to the associated fishing communities. This inseason action is not expected to result in exceeding the Area 2A Pacific halibut non-Tribal directed commercial fishery allocation. NMFS regulations allow the Regional Administrator to add fishing periods and set fishing period limits inseason, provided that the action allows allocation objectives to be met and will not result in exceeding the catch limit for the fishery. NMFS recently received information on the progress of landings in the non-Tribal directed commercial fishery, indicating an additional fishing period with fishing period limits should be implemented in the fishery to ensure optimal and sustainable harvest of the allocation. As stated above, it is in the public interest that this action is not delayed, because a delay in the effectiveness of this additional fishing period would not allow the allocation objectives of the Area 2A Pacific halibut non-Tribal directed commercial fishery to be met.

Authority: 16 U.S.C. 773–773k.

Dated: September 6, 2024.

Lindsay Fullenkamp,

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

[FR Doc. 2024–20608 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 89, No. 176

Wednesday, September 11, 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 25

[Docket No. FAA-2024-1310; Notice No. 25-24-04-SC]

Special Conditions: Aerocon Engineering Company, Airbus Model A350-941 Airplane; Forward Lower Lobe Crew Rest Compartment Installation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Airbus Model A350-941 airplane. This airplane, as modified by Aerocon Engineering Company (Aerocon), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is an installation of a lower lobe crew rest (LLCR) compartment located under the passenger cabin floor in the cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before October 28, 2024.

ADDRESSES: Send comments identified by Docket No. FAA-2024-1310 using any of the following methods:

Federal eRegulations 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 (DOT), 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 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.

FOR FURTHER INFORMATION CONTACT: Daniel Jacquet, Cabin Safety, AIR-624, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax (206) 231-3208; email daniel.jacquet@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments and will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these special conditions based on the comments received.

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to www.regulations.gov, including any personal information you provide. The FAA will also post a report summarizing each substantive verbal

contact received about these special conditions.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually 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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these proposed special conditions. Send submissions containing CBI to the individual listed in the For Further Information Contact section above. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed special conditions.

Background

On August 27, 2021, Aerocon applied for a supplemental type certificate for a LLCR installation in the Model A350-941 airplane. The Airbus Model A350-941 airplane is a twin-engine, transport-category airplane with a maximum takeoff weight of 623,908 pounds and maximum seating for 480 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Aerocon must show that the Airbus Model A350-941 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. T000631B or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (e.g., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus A350-941 airplane because of a novel or unusual design feature, special conditions are

prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus A350–941 series airplane must comply with the exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus A350–941 airplane will incorporate the following novel or unusual design feature:

The installation of a LLCR under the passenger cabin floor in the cargo compartment.

Discussion

Section 25.819 applies to lower deck service compartments (including galleys) but is not directly applicable to forward LLCR compartments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. Special conditions are required for the certification of the LLCR to supplement part 25.

The LLCR will be located under the passenger cabin floor in the forward cargo compartment of Airbus A350–941 model airplanes. It will be the size of three standard airfreight containers and be removable from the cargo compartment. Occupancy of the LLCR will be limited to a maximum of eight crew members, and it will only be occupied in flight, *i.e.*, not during taxi, takeoff or landing. A smoke detection system, fire extinguishing system, oxygen system and occupant amenities will be provided.

The LLCR will be accessed from the main deck via a stair house. The floor within the stair house has an access hatch that leads to the stairs, which occupants use to descend into the LLCR. This hatch locks automatically in the open position when fully opened. In addition, there will be an emergency hatch, which opens directly into the main passenger cabin area.

The LLCR also has a maintenance access/ground loading door, which

allows access to and from the cargo compartment. The intended use of this door is to allow cargo loading and maintenance personnel to enter the LLCR from the cargo compartment when the airplane is on the ground and not moving.

The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these proposed special conditions are applicable to Airbus Model A350–941 airplanes as modified by Aerocon. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to the other model as well.

Conclusion

This action affects only certain novel or unusual design feature on the Airbus 350–941 airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, and 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions to be part of the type certification basis for Airbus Model A350–941 airplanes, as modified by Aerocon Engineering Company. The LLCR must meet the below requirements:

1. Occupancy of the forward lower lobe crew rest compartment is limited to a maximum of eight. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the crew rest compartment.

(a) There must be appropriate placards displayed in a conspicuous place at each entrance to the LLCR compartment to indicate:

(1) The maximum number of occupants allowed;

(2) That occupancy is restricted to crewmembers trained in the evacuation

procedures for the crew rest compartment;

(3) That occupancy is prohibited during taxi, take-off and landing;

(4) That smoking is prohibited in the crew rest compartment;

(5) That hazardous quantities of flammable fluids, explosives, or other dangerous cargo is prohibited from the crew rest compartment.

(6) That the crew rest area must be limited to the stowage of crew personal luggage and must not be used for the stowage of cargo or passenger baggage.

(b) There must be at least one ashtray located conspicuously on or near the entry side of any entrance, usable in-flight, to the crew rest compartment.

(c) There must be a means to prevent passengers from entering the compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the crew rest compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed in the evacuation routes, there must be a means to preclude anyone from being trapped inside the compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the crew rest compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition—

(a) The routes must be located with one at each end of the compartment, or with two having sufficient separation within the compartment and between the routes to minimize the possibility of an event (either inside or outside of the crew rest compartment) rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing on top of or against the escape route. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If a hatch is installed in an evacuation route, the point at which the evacuation route terminates in the passenger cabin should not be located where normal movement by passengers or crew occurs

(main aisle, cross aisle, passageway or galley complex). If such a location cannot be avoided, special consideration must be taken to ensure that the hatch or door can be opened when a person, the weight of a ninety-fifth percentile male, is standing on the hatch or door. The use of evacuation routes must not be dependent on any powered device. If there is low headroom at or near an evacuation route, provisions must be made to prevent or to protect occupants of the crew rest area from head injury.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the crew rest compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the airplane flight manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a 95th percentile male) from the crew rest compartment to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant within the crew rest area) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. For evacuation routes having stairways, the additional assistants may descend down to one half the elevation change from the main deck to the lower deck compartment, or to the first landing, whichever is higher.

4. The following signs and placards must be provided in the crew rest compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i) at Amendment 25–58, except that a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.*, white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable;

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route;

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions; and

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. In the event of failure of the aircraft's main power system, or of the normal crew rest compartment lighting system, there must be a means for emergency illumination to be automatically provided for the crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient with the privacy curtains in the closed position for each occupant of the crew rest to locate a deployed oxygen mask.

6. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the crew rest compartment. There must also be public address (PA) system microphones at each flight attendant seat required to be near a floor level exit in the passenger cabin per § 25.785(h) at Amendment 25–51. The PA system must allow two-way voice communications between flight attendants and the occupants of the crew rest compartment, except that one microphone may serve more than one exit provided the proximity of the exits allows unassisted verbal communication between seated flight attendants.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the crew rest compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary

power units (APU), or the disconnection or failure of all power sources dependent on their continued operation (*i.e.*, engine & APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the crew rest compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.*, sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) at Amendment 25–38 that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of a small, isolated galley, the following equipment must be provided in the crew rest compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) Two protective breathing equipment (PBE) devices approved to Technical Standard Order (TSO)—C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater; and

(c) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations (beyond the minimum numbers prescribed in Special Condition no. 9) may be required as a result of any egress analysis accomplished to satisfy Special Condition no. 2(a).

10. A smoke or fire detection system (or combination of systems) must be provided that monitors each occupiable area within the crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or combination of systems) must provide:

(a) A visual indication to the flight deck within one minute after the start of a fire;

(b) An aural warning in the crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, and considering the positioning of flight attendants throughout the main

passenger compartment during various phases of flight.

11. The crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source.

12. The crew rest compartment design must incorporate a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the crew rest compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the crew rest compartment and, if applicable, when accessing the crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the access to the crew rest compartment is opened, during an emergency evacuation, must dissipate within five minutes after the access to the crew rest compartment is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the crew rest compartment (the amount of smoke entrained by a firefighter exiting the crew rest compartment through the access is not considered hazardous). The firefighting procedures must include a provision to ensure that all door(s) and hatch(es) at the crew rest compartment outlets are closed after evacuation of the crew rest compartment and during firefighting to minimize smoke and extinguishing agent from entering other occupiable compartments. During the 1-minute smoke detection time, penetration of a small quantity of smoke from the crew rest compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement. If a built-in fire extinguishing system is used in lieu of manual firefighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the crew rest compartment, considering the fire threat, volume of

the compartment and the ventilation rate.

13. The crew rest compartment design must include a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the crew rest compartment. The system must provide an aural and visual warning to the occupants of the crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the crew rest compartment is depressed. Procedures for crew rest occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to crew rest compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the crew rest area compartment that accompanies automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks is required for each seat or berth. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the crew rest area compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied.

(c) For each crew rest section created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) Emergency illumination (Special Condition no. 5);

(2) Emergency alarm system (Special Condition no. 7);

(3) Seat belt fasten signal or return to seat signal as applicable (Special Condition no. 8); and

(4) The smoke or fire detection system (Special Condition no. 10).

(d) Crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the

crew rest compartment and must meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58. An exit sign with reduced background area as described in Special Condition no. 4.(a) may be used to meet this requirement.

(e) For sections within a crew rest compartment that are created by the installation of a partition with a door separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections is designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant within this area must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) at Amendment 25–58 that direct occupants to the primary stairway exit. An exit sign with reduced background area as described in Special Condition no. 4.(a) may be used to meet this requirement.

(5) Special Conditions no. 5 (emergency illumination), no. 7 (emergency alarm system), no. 8 (fasten seat belt signal or return to seat signal as applicable) and no. 10 (smoke or fire detection system) must be met with the door open or closed.

(6) Special Conditions no. 6 (two-way voice communication) and no. 9 (emergency firefighting and protective equipment) must be met independently for each separate section except for lavatories or other small areas that are not intended to be occupied for extended periods of time.

15. Where a waste disposal receptacle is fitted, it must be equipped with a built-in fire extinguisher designed to discharge automatically upon occurrence of a fire in the receptacle.

16. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853 at Amendment 25–66. Mattresses must comply with the flammability

requirements of § 25.853(b) and (c) at Amendment 25–66.

17. All lavatories within the crew rest are required to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition no. 10 for smoke detection.

18. When a crew rest compartment is installed or enclosed as a removable module in part of a cargo compartment or is located directly adjacent to a cargo compartment without an intervening cargo compartment wall, the following applies:

(a) Any wall of the module (container) forming part of the boundary of the reduced cargo compartment, subject to direct flame impingement from a fire in the cargo compartment and including any interface item between the module (container) and the airplane structure or systems, must meet the applicable

requirements of § 25.855 at Amendment 25–60.

(b) Means must be provided so that the fire protection level of the cargo compartment meets the applicable requirements of §§ 25.855 at Amendment 25–60, 25.857 at Amendment 25–60 and 25.858 at Amendment 25–54 when the module (container) is not installed.

(c) Use of each emergency evacuation route must not require occupants of the crew rest compartment to enter the cargo compartment in order to return to the passenger compartment.

(d) The aural warning in Special Condition no. 7 must sound in the crew rest compartment in the event of a fire in the cargo compartment.

19. Means must be provided to prevent access into the Class C cargo compartment during all airplane operations and to ensure that the

maintenance door is closed during all airplane flight operations.

20. All enclosed stowage compartments within the crew rest that are not limited to stowage of emergency equipment or airplane-supplied equipment (*e.g.*, bedding) must meet the design criteria given in the table below. As indicated by the table below, this special condition does not address enclosed stowage compartments greater than 200 ft³ in interior volume. The in-flight accessibility of very large, enclosed stowage compartments and the subsequent impact on the crewmembers’ ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

Fire protection features	Stowage compartment interior volumes		
	less than 25 ft ³	25 ft ³ to 57 ft ³	57 ft ³ to 200 ft ³
Materials of Construction ¹	Yes	Yes	Yes
Detectors ²	No	Yes	Yes
Liner ³	No	No	Yes
Locating Device ⁴	No	Yes	Yes

¹ *Material*: The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components per the requirements of § 25.853. For compartments less than 25 ft³ in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

² *Detectors*: Enclosed stowage compartments equal to or exceeding 25 ft³ in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire;

(b) An aural warning in the crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

³ *Liner*: If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment, then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft³ in interior volume but less than 57 ft³ in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft³ in interior volume *but less than or equal to 200 ft³*, a liner must be provided that meets the requirements of § 25.855 at Amendment 25–60 for a class B cargo compartment.

⁴ *Location Detector*: Crew rest areas which contain enclosed stowage compartments exceeding 25 ft³ interior volume and which are located away from one central location such as the entry to the crew rest area or a common area within the crew rest area would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in in Kansas City, Missouri, on September 5, 2024.

Patrick R. Mullen,
Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–20519 Filed 9–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–2139; Project Identifier MCAI–2024–00123–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2023–05–02, which applies to certain Airbus SAS Model A318, A319, A320

and A321 series airplanes. AD 2023–05–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2023–05–02, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 28, 2024.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- **Federal eRulemaking Portal:** Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- **Fax:** 202–493–2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2139; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this proposed AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADS@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2139.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email Timothy.P.Dowling@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2024–2139; Project Identifier MCAI–2024–00123–T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change,

and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually 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 NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email Timothy.P.Dowling@faa.gov. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2023–05–02, Amendment 39–22371 (88 FR 15600, March 14, 2023) (AD 2023–05–02), for certain Airbus SAS Model A318, A319, A320 and A321 series airplanes. AD 2023–05–02 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2022–0102, dated June 8, 2022 (EASA AD 2022–0102) (which corresponds to FAA AD 2023–05–02), to correct an unsafe condition.

AD 2023–05–02 requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations. AD 2023–05–02 also specifies that accomplishing the revision of the existing maintenance or inspection program terminates the

requirements of paragraphs (g) through (k) of AD 2018–23–02, Amendment 39–19488 (83 FR 59278, November 23, 2018). The FAA issued AD 2023–05–02 to address the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics. The unsafe condition, if not addressed, could result in an increased potential for failure of certain life-limited parts, and reduced structural integrity of the airplane.

Actions Since AD 2023–05–02 Was Issued

Since the FAA issued AD 2023–05–02, EASA superseded AD 2022–0102 and issued EASA AD 2024–0046, dated February 19, 2024 (EASA AD 2024–0046) (also referred to as the MCAI), for all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, 232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. Model A320–215 airplanes are not certified by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that new or more restrictive airworthiness limitations have been developed.

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after November 6, 2023, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

The FAA is proposing this AD to address the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics. The unsafe condition, if not addressed, could result in an increased potential for failure of certain life-limited parts, and reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–2139.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0046. This material specifies new or more restrictive airworthiness

limitations for airplane structures and safe life limits.

This proposed AD would also require EASA AD 2022–0102, which the Director of the Federal Register approved for incorporation by reference as of April 18, 2023 (88 FR 15600, March 14, 2023).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2023–05–02. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, which are specified in EASA AD 2024–0046 already described, as proposed for incorporation by reference. Any differences with EASA AD 2024–0046 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (n)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with

requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to retain the IBR of EASA AD 2022–0102 and incorporate EASA AD 2024–0046 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0102 and EASA AD 2024–0046 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0102 or EASA AD 2024–0046 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2022–0102 or EASA AD 2024–0046. Material required by EASA AD 2022–0102 and EASA AD 2024–0046 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2024–2139 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (e.g., inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under “Additional AD Provisions.” This new format includes a “New Provisions

for Alternative Actions and Intervals” paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,920 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2023–05–02 to be \$7,650 (90 work-hours × \$85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new proposed actions to be \$7,650 (90 work-hours × \$85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Would not affect intrastate aviation in Alaska, and
- (3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
- a. Removing Airworthiness Directive 2023–05–02, Amendment 39–22371 (88 FR 15600, March 14, 2023); and
 - b. Adding the following new Airworthiness Directive:

Airbus SAS: Docket No. FAA–2024–2139; Project Identifier MCAI–2024–00123–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 28, 2024.

(b) Affected ADs

- (1) This AD replaces AD 2023–05–02, Amendment 39–22371 (88 FR 15600, March 14, 2023) (AD 2023–05–02).
- (2) This AD affects AD 2018–23–02, Amendment 39–19488 (83 FR 59278, November 23, 2018) (AD 2018–23–02).

(c) Applicability

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 6, 2023.

- (1) Model A318–111, –112, –121, and –122 airplanes.
- (2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.
- (3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.
- (4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the risks associated with the effects of aging on airplane systems. Such effects could change system characteristics. The unsafe condition, if not addressed, could result in an increased potential for failure of certain life-limited parts, and reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (n) of AD 2023–05–02, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before February 18, 2022, comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0102, dated June 8, 2022 (EASA AD 2022–0102). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2022–0102, With No Changes

This paragraph restates the exceptions specified in paragraph (o) of AD 2023–05–02, with no changes.

- (1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2022–0102.
- (2) Paragraph (3) of EASA AD 2022–0102 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after April 18, 2023 (the effective date of AD 2023–05–02).
- (3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0102 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0102, or within 90 days after April 18, 2023 (the effective date of AD 2023–05–02), whichever occurs later.
- (4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2022–0102.
- (5) This AD does not adopt the “Remarks” section of EASA AD 2022–0102.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (p) of AD 2023–05–02, with a new exception. Except as required by paragraph

(j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0102.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0046, dated February 19, 2024 (EASA AD 2024–0046). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2024–0046

- (1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2024–0046.
- (2) Paragraph (3) of EASA AD 2024–0046 specifies revising “the AMP,” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.
- (3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2024–0046 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2024–0046, or within 90 days after the effective date of this AD, whichever occurs later.
- (4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2024–0046.
- (5) This AD does not adopt the “Remarks” section of EASA AD 2024–0046.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2024–0046.

(m) Terminating Action for Certain Requirements of AD 2018–23–02

Accomplishing the revision of the existing maintenance or inspection program required by paragraph (g) or (j) of this AD terminates the requirements of paragraphs (g) through (k) of AD 2018–23–02.

(n) Additional AD Provisions

The following provisions also apply to this AD:

- (1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation

Branch, mail it to the address identified in paragraph (o) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(ii) AMOCs approved for AD 2023–05–02 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(iii) AMOCs approved previously for AD 2023–05–02 are approved as AMOCs for the corresponding provisions of EASA AD 2024–0046 that are required by paragraph (j) of this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Additional Information

For more information about this AD, contact Timothy Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3667; email Timothy.P.Dowling@faa.gov.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the material listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this material as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following material was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2024–0046, dated February 19, 2024.

(ii) [Reserved]

(4) The following material was approved for IBR on April 18, 2023 (88 FR 15600, March 14, 2023).

(i) EASA AD 2022–0102, dated June 8, 2022.

(ii) [Reserved]

(5) For EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this EASA material on the EASA website at ad.easa.europa.eu.

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locationsoremailfr.inspection@nara.gov.

Issued on September 5, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–20381 Filed 9–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 702

[Docket No. 240905–0231]

RIN 0694–AJ55

Establishment of Reporting Requirements for the Development of Advanced Artificial Intelligence Models and Computing Clusters

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule; request for comment

SUMMARY: This proposed rule would amend the Bureau of Industry and Security's (BIS) Industrial Base Surveys—Data Collections regulations by establishing reporting requirements for the development of advanced artificial intelligence (AI) models and computing clusters under the Executive order of October 30, 2023, “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.”

DATES: Comments on this proposed rule must be received by BIS by no later than October 11, 2024.

ADDRESSES: Comments on this proposed rule may be submitted to the Federal rulemaking portal

(www.regulations.gov). The regulations.gov ID for this proposed rule is: BIS–2024–0047. Please refer to RIN 0694–AJ55 in all comments.

Anyone submitting business confidential information should 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>. Commenters submitting business confidential information are encouraged to scan a hard copy of the non-confidential version to create an image of the file, rather than submitting a digital copy with redactions applied, to avoid inadvertent redaction errors which could enable the public to read business confidential information.

FOR FURTHER INFORMATION CONTACT:

Sean Delehanty, Office of Strategic Industries and Economic Security Bureau of Industry and Security, Department of Commerce. Phone: 202–316–5765; Email: Sean.Delehanty@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4.2(a)(i) of Executive Order 14110 of October 30, 2023, “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” (E.O. 14110), directs the Secretary of Commerce to require companies developing, or demonstrating an intent to develop, potential dual-use foundation AI models to provide certain information to the Federal Government on an ongoing basis. Additionally, section 4.2(a)(ii) of E.O. 14110 directs the Secretary of Commerce to require companies, individuals, or other organizations or entities that acquire, develop, or possess a potential large-scale computing cluster to report any such acquisition, development, or possession, including the existence and location of these clusters and the amount of total computing power available in each cluster.

As defined under E.O. 14110, a “dual-use foundation model” is “trained on broad data; generally uses self-supervision; contains at least tens of billions of parameters; is applicable across a wide range of contexts; and that exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health or safety, or any combination of those matters.” The reporting requirements proposed in this regulation are intended to apply to dual-use foundation models that meet technical conditions issued by the Department. The Department expects to update the technical conditions, based on technological advancements, as

necessary and appropriate, as directed by section 4.2(b) of E.O. 14110.

E.O. 14110 directs the Department of Commerce (Department) to collect information about dual-use foundation models in accordance with the Defense Production Act (DPA) (50 U.S.C. 4501 *et seq.*). Under the DPA, the President is authorized to take actions that ensure the U.S. industrial base is prepared to supply products and services to support the national defense. In this context, the term “national defense” means “programs for military and energy production or construction, military or critical infrastructure assistance to any foreign nation, homeland security, stockpiling, space, and any directly related activity” (50 U.S.C. 4552(14)). Additionally, the DPA makes clear that the international competitiveness of the U.S. industrial base directly affects its ability to support the national defense (see 50 U.S.C. 4502(a)(7)).

Among other authorities, the DPA authorizes the President “by regulation, subpoena, or otherwise, to obtain such information from, require such reports and the keeping of such records by, make such inspection of the books, records, and other writings, premises or property of, and take the sworn testimony of, and administer oaths and affirmations to, any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of” the DPA (50 U.S.C. 4555(a)). The DPA further specifies that this grant of authority “includes the authority to obtain information in order to perform industry studies assessing the capabilities of the United States industrial base to support the national defense” (50 U.S.C. 4555(a)).

To carry out its obligations under section 4.2(a) of E.O. 14110, BIS is exercising its DPA authority, which was delegated to the Department by the President in Executive Order 13603, and subsequently re-delegated within the Department to BIS, to collect information from U.S. companies that are developing, have plans to develop, or have the computing hardware necessary to develop dual-use foundation models. AI models are quickly becoming integral to numerous U.S. industries that are essential to the national defense. For example, manufacturers of military equipment (e.g., aircrafts, tanks, and missile launchers) use AI models to enhance the maneuverability, accuracy, and efficiency of equipment.¹ Similarly,

manufacturers of signal intelligence devices (e.g., satellites, cameras, and radar) use AI models to improve how those devices capture signals and eliminate noise.² As a final example, developers of cybersecurity software, which can be applied to protect a wide range of systems and infrastructure that are critical to the national defense, use AI models to increase the speed at which that software detects and responds to cyberattacks.³

Dual-use foundation models could increase the capabilities of these products and services to an even greater extent. Specifically, integrating dual-use foundation models into products like military equipment, signal intelligence devices, and cybersecurity software could enable those products to operate more effectively across a wider range of environments, to respond more effectively to unexpected signals, and to combat additional types of cyberattacks.

Given those potential capabilities, it is essential to the national defense that the defense industrial base is able to integrate dual-use foundation models. Indeed, because industries and governments across the world are actively working to integrate dual-use foundation models into their defense capabilities, the U.S. defense industrial base will need to integrate dual-use foundation models to remain internationally competitive.

Accordingly, the U.S. Government must be ready to take actions that ensure dual-use foundation models produced by U.S. companies are available to the defense industrial base. To do so, the U.S. Government needs information about how many U.S. companies are developing, have plans to develop, or have the computing hardware necessary to develop dual-use

foundation models, as well as information about the characteristics of dual-use foundation models under development. Such information will allow the U.S. Government to determine whether action is necessary to stimulate development of dual-use foundation models or to support the development of specific types of models.

The integration of AI models into the defense industrial base also requires the U.S. Government to take actions as needed to ensure that dual-use foundation models operate in a safe and reliable manner. Products integrating these models may operate in unpredictable or unreliable ways, potentially resulting in dangerous accidents, and a lack of reliability will make it difficult for the U.S.

Government to use those products in contexts where the margin for error is small, including defense-related activities where accidents could result in injury or even loss of life. Thus, the U.S. Government needs information about how companies developing dual-use foundation models are training those models to respond to different kinds of inputs and information about how those companies have tested the safety and reliability of their models. Such information will allow the U.S. Government to determine the extent to which certain dual-use foundation models can be used by the defense industrial base and whether action is needed to ensure that the defense industrial base produces the safest and most reliable products and services in the world.

For similar reasons, the U.S. Government must minimize the vulnerability of dual-use foundation models to cyberattacks. Dual-use foundation models can potentially be disabled or manipulated by hostile actors, and it will be difficult for the U.S. Government to rely on a particular model unless it can determine that the model is robust against such attacks. Accordingly, the U.S. Government needs information about the cybersecurity measures that companies developing dual-use foundation models use to protect those models, as well as information about those companies' cybersecurity resources and practices. Under 15 CFR 702.3 all information submitted to the Department under this rule will be treated as confidential and afforded all the protections of section 705(d) of the DPA. Such information will allow the U.S. Government to determine which models are secure enough to be integrated into products or services that are essential to the national defense and to assess whether action is needed to ensure that the defense

¹ Shield AI, “Shield AI Conducts AI-Piloted Flights on Sixth Aircraft, the Kratos MQM-178 Firejet” (Mar. 29, 2024), [https://shield.ai/shield-ai-conducts-ai-piloted-flights-on-sixth-aircraft-the-](https://shield.ai/shield-ai-conducts-ai-piloted-flights-on-sixth-aircraft-the-kratos-mqm-178-firejet/)

[kratos-mqm-178-firejet/](https://shield.ai/shield-ai-conducts-ai-piloted-flights-on-sixth-aircraft-the-kratos-mqm-178-firejet/); RTX, “Raytheon Technologies Unveils Next-Generation Electro-Optical Intelligent-Sensing Capability (Apr. 24, 2023), <https://www.rtx.com/news/news-center/2023/04/24/raytheon-technologies-unveils-next-generation-electro-optical-intelligent-sensing>.”

² National Instruments, “Artificial Intelligence in Software-Defined SIGINT Systems” (Feb. 6, 2024), <https://www.ni.com/en/solutions/aerospace-defense/radar-electronic-warfare-sigint/artificial-intelligence-in-software-defined-sigint-systems.html>; Northrop Grumman, “Artificial Intelligence Helps Protect Troops in Denied GPS Environments”, <https://www.northropgrumman.com/what-we-do/artificial-intelligence-helps-protect-troops-in-denied-gps-environments>.

³ NVIDIA, “NVIDIA and Booz Allen Hamilton Expand Partnership to Bring AI-Enabled Cybersecurity to Public and Private Sectors” (Sept. 20, 2022), <https://nvidianews.nvidia.com/news/nvidia-and-booz-allen-hamilton-expand-partnership-to-bring-ai-enabled-cybersecurity-to-public-and-private-sectors>; IBM, “AI and Automation for Cybersecurity” (June 2022), <https://www.ibm.com/thought-leadership/institute-business-value/en-us/report/ai-cybersecurity>.

industrial base is producing the most secure products and services in the world.

Finally, the U.S. Government must prepare the defense industrial base for the possibility that foreign adversaries or non-state actors will use dual-use foundation models for activities that threaten the national defense, including to develop weapons and other dangerous technologies. Accordingly, the U.S. Government requires information about the safety and reliability of AI models, including any potentially dangerous capabilities that developers of dual-use foundation models have identified with respect to those models. This includes the results of tests related to reliability as well as the results of any red-team testing that the company has conducted relating to lowering the barrier to entry for the development, acquisition, and use of biological, weapons by non-state actors; the discovery of software vulnerabilities and development of associated exploits; the use of software or tools to influence real or virtual events; and the possibility for self-replication or propagation. Such information will enable the U.S. Government to determine whether investments in the defense industrial base are needed to ensure the United States has access to safe and reliable AI systems, as well as to counteract the dangerous capabilities identified or to ensure that adequate safeguards are in place to prevent the theft or misuse of dual-use foundation models by foreign adversaries or non-state actors.

In short, dual-use foundation models will likely drive significant advances in numerous industries on which the national defense depends. These advances require BIS to conduct an ongoing assessment of the AI industry to ensure that the U.S. Government has the most accurate, up-to-date information when making policy decisions about the international competitiveness of the industrial base and its ability to support the national defense.

Section 4.2(a)(i) of E.O. 14110 mandates that the Secretary shall require companies developing dual-use foundation AI models to provide information, reports, or records regarding the following:

1. any ongoing or planned activities related to training, developing, or producing dual-use foundation models, including the physical and cybersecurity protections taken to assure the integrity of that training process against sophisticated threats;

2. the ownership and possession of the model weights of any dual-use foundation models, and the physical

and cybersecurity measures taken to protect those model weights; and

3. the results of any developed dual-use foundation model's performance in relevant AI red-team testing, including a description of any associated measures the company has taken to meet safety objectives, such as mitigations to improve performance on these red-team tests and strengthen overall model security.

4. Other information pertaining to the safety and reliability of dual-use foundation models, or activities or risks that present concerns to U.S. national security.

Section 4.2(a)(ii) of E.O. 14110 also mandates that companies, individuals, or other organizations or entities that acquire, develop, or possess a potential large-scale computing cluster must report any such acquisition, development, or possession, including the existence and location of these clusters and the amount of total computing power available in each cluster. To the extent that these entities are companies developing dual-use foundation models, they are also subject to obligations 1–3, above.

Discussion of the Proposed Rule

This proposed rule outlines a potential notification and reporting process for companies developing or intending to develop dual-use foundation AI models and for companies, individuals or other organizations or entities that acquire, develop, or possess computing clusters that meet technical conditions issued by the Department. Such entities would be required to report the required information to the BIS on a quarterly basis for activities that occurred during that quarter or that are planned to occur in the six months following the quarter.

BIS collected information responsive to the requirements of section 4.2(a) of E.O. 14110 via a mandatory survey of companies identified as developing or planning to develop potential dual-use foundation models. That survey was issued on January 26, 2024. Under this proposed rule, companies that completed the survey and any other companies that have developed or are in the process of developing dual-use foundation models or large-scale computing clusters would be required to submit information about these activities on a quarterly basis.

For companies that have already submitted complete information via the survey, the reporting requirements will not require that the company report activity already reported to BIS in the survey but would require the reporting of any additions, updates, or changes to

the information since the survey. Any company that has filed at least one report would be required to continue to file reports on a quarterly basis for as long as it continues to meet the reporting requirements or, if it no longer meet the requirements, until it has filed seven quarterly reports affirming that it has no additions, updates, or changes to the information in the last report. The reporting system will allow for companies that have no additions, updates, or changes since the last report to make a simple notification to that effect.

Request for Comments

BIS welcomes public comment on all aspects of this proposed regulation. While much of the information that entities must report is dictated by section 4.2(a) of E.O. 14110, BIS is particularly interested in public comments on the following:

1. *Quarterly Notification Schedule:* BIS has proposed that all covered U.S. persons with models or clusters exceeding the technical thresholds for reporting should notify BIS on a quarterly basis. Covered U.S. persons would be required to make quarterly notifications of ‘applicable activities’ that meet the criteria under § 702.7(a)(1)(i) or (ii) planned to occur in the next six months related to dual-use foundation models and/or computing clusters, as well as quarterly notifications required for any ‘applicable activities’ (*i.e.*, an “applicable activity” that meets the criteria under § 702.7(a)(1)(i) or (ii) and § 702.7(a)(2)(v) (*Affirmation of no applicable activities*), as applicable. ‘Applicable activities’ are defined to include developing, or having the intent to develop within the next six months, an AI model or computing cluster above certain technical thresholds specific in this proposed rule. If a covered U.S. person has any ‘applicable activities’ to report, then they will notify BIS, and BIS will follow up with more detailed questions, to which the Covered U.S. person must respond within 30 calendar days. If Covered U.S. persons have no ‘applicable activities’ to report, they would only be required to affirm that fact to BIS each quarter. BIS has proposed a quarterly notification schedule to provide the U.S. Government with timely information on the safety and security of large AI models and computing clusters, while offering a regular notification schedule to facilitate respondent planning and ease respondent burden. BIS welcomes comments on the frequency of the proposed notification schedule, as well

as alternatives for achieving timely reporting of the required information.

2. *Collection and Storage:* BIS recognizes that the information collected through these reporting requirements is extremely sensitive. In the interest of gathering information on prioritizing the safety of respondents' data, BIS welcomes comments related to how this data should be collected and stored.

3. *Collection Thresholds:* BIS has included the technical conditions specified in E.O. 14110 for models and computing clusters that would trigger the proposed reporting requirements. As directed by section 4.2(b) of E.O. 14110, BIS will update these technical conditions as appropriate. In addition to the technical parameters in E.O. 14110, BIS is also seeking comments on the following proposed updated collection parameters. BIS welcomes comments on the following sets of technical parameters.

- A dual-use foundation model training run triggers reporting requirements if it utilizes more than 10^{26} computational operations (e.g., integer or floating-point operations). Models trained on primarily biological sequence data, but at the lower threshold of 10^{23} computational operations, as specified by section 4.2(b) of E.O. 14110, will be addressed in a separate survey.

- Large-scale computing clusters are defined as clusters having a set of machines transitively connected by networking of over 300 Gbit/s and having a theoretical maximum performance greater than 10^{20} computational operations (e.g., integer or floating-point operations) per second (OP/s) for AI training, without sparsity.

Rulemaking Requirements

1. This proposed rule has been determined to be a significant regulatory action for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This proposed rule involves a currently approved information collection *National Security and Critical Technology Assessments of the US Industrial Base* (OMB Control Number 0694–0119). The authority for this collection is section 705 of the Defense Production Act of 1950, as amended and related Executive Orders

12656 and 13603. Under this information collection, BIS conducts surveys and assessments of critical U.S. industrial sectors and technologies. Undertaken at the request of various policy, research and development, and program and planning organizations within the Department of Defense and the Armed Services, Department of Homeland Security (DHS), National Aeronautics and Space Administration (NASA), and other agencies, BIS research, data collection and analysis provide needed information to benchmark industry performance and raise awareness of diminishing manufacturing capabilities.

Most surveys include questions necessary to obtain data on employment, supply chain, financial performance, production, technology and service capabilities, research and development (R&D), investment, competitive outlook, export controls and other relevant information. Some surveys include a few non-standard questions, depending on the industry and the needs of the partner agency. The number of surveys required per assessment varies with the size of the sector and the scope of the project.

Information gathered from these surveys is deemed *business confidential* and will be treated in accordance with section 705 of the Defense Production Act of 1950 which prohibits the publication or disclosure of such information unless the President determines that its withholding is contrary to the national defense. To review previous surveys cleared under this generic collection—including all background materials—please visit at <https://www.reginfo.gov/public/do/PRAMain> and use the search function to enter either the title of the collection or the OMB Control Number.

When this proposed rule is finalized, BIS intends to use this existing information collection for the collection/reporting requirement required by E.O. 14110. BIS estimates the specific survey required by this proposed rule will have an estimated burden of 5,000 hours per year aggregated across all new respondents. BIS believes this increase in respondent burden does not require a change to the burden or cost estimates for the overall umbrella clearance. Please see the request for comment section of the proposed rule for more information the potential information collection elements BIS is considering for the final rule and subsequent surveys.

3. These proposed changes do not contain policies with federalism implications as that term is defined in E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Regulation, Small Business Administration that this proposed rule will not have a significant impact on a substantial number of small entities for the reasons explained below. No other law requires such an analysis. Consequently, no regulatory flexibility analysis is required, and none has been prepared.

Number of Small Entities

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, a small business, as described in the Small Business Administration's Table of Small Business Size Standards Matched to North American Industry Classification System (NAICS) Codes (effective March 17, 2023), has a maximum annual revenue of \$47 million and a maximum of 1,500 employees (for some business categories, these numbers are lower). A small governmental jurisdiction is a government of a city, town, school district or special district with a population of less than 50,000. A small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The most apt code to apply here is NAICS 518—Computing Infrastructure Providers, Data Processing, Web Hosting, and Related Services.

The reporting requirements in this proposed rule are expected to apply to only a small number of entities—only those companies developing or intending to develop a dual-use foundation model and those companies, individuals, or other organizations or entities that acquire, develop, or possess potential large-scale computing clusters. For the purposes of this rulemaking, the term “covered U.S. persons” includes

all U.S. persons subject to the reporting requirements of E.O. 14110, section 4.2(a), and is defined as any individual U.S. citizen, any lawful permanent resident of the United States as defined by the Immigration and Nationality Act, any entity—including organizations, companies, and corporations—organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person (individual) located in the United States. At present, BIS assesses that there are between zero and 15 companies exceed the reporting thresholds for models and computing clusters at the time of publication. All of these entities are well-resourced technology companies. Exceeding the technical thresholds for models and computing clusters requires access to vast computing power, which is not typically available to small entities. The minimum computational threshold that would trigger a reporting requirement established in E.O. 14110 currently exceeds all or virtually all models in use.⁴

As AI technology development and implementation are expected to advance over the next few years, the number of covered U.S. persons involved in it will also increase. However, as directed by E.O. 14110, the Secretary will update the technical conditions that trigger the reporting requirements over time, which may limit the number of additional impacted entities over time.

Impact

For the reasons discussed above, BIS believes that this proposed rule, which would impose reporting requirements on large technology companies, would have no significant impact on small entities.

Conclusion

BIS believes that the overall impact of this proposed rule on small entities would not be significant, as it would only apply to entities with large monetary and computational resources, which BIS believes are not small entities. For the reasons set forth above, the Chief Counsel for Regulations at the Department of Commerce has certified that this action would not have a significant impact on a substantial number of small entities.

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at www.regulations.gov. The *regulations.gov* ID for this proposed rule is: BIS-2024-0047.

List of Subjects in 15 CFR Part 702

Business and industry, Confidential business information, Employment, National defense, Penalties, Research, Science and technology.

Accordingly, 15 CFR part 702 is proposed to be amended as follows:

PART 702—INDUSTRIAL BASE SURVEYS—DATA COLLECTIONS

■ 1. The authority citation for 15 CFR part 702 is revised to read as follows:

Authority: 50 U.S.C. 4501 *et seq.*; E.O. 13603, 77 FR 16651, 3 CFR, 2012 Comp., p. 225; E.O. 14110, 88 FR 75191, 3 CFR, 2023 Comp., p. 657.

■ 2. Section 702.7 is added to read as follows:

§ 702.7 Special requirements for on-going reporting regarding the development of advanced artificial intelligence models and computing clusters.

(a) *Reporting requirements.* (1) Covered U.S. persons are required to submit a notification to the Department by emailing ai_reporting@bis.doc.gov on a quarterly basis as defined in paragraph (a)(2) of this section if the covered U.S. person engages in, or plans, within six months, to engage in ‘applicable activities,’ defined as follows:

(i) Conducting any AI model training run using more than 10^{26} computational operations (e.g., integer or floating-point operations); or

(ii) Acquiring, developing, or coming into possession of a computing cluster that has a set of machines transitively connected by data center networking of greater than 300 Gbit/s and having a theoretical maximum greater than 10^{20} computational operations (e.g., integer or floating-point operations) per second (OP/s) for AI training, without sparsity.

Note 1 to paragraph (a)(1): Consistent with industry conventions, one multiply-accumulate computation, $D = A \times B + C$, should be counted as two operations.

(2) *Timing of notifications and response to BIS questions—(i) Notification of applicable activities.* Covered U.S. persons subject to the reporting requirements in paragraph (a)(1) of this section must notify BIS of ‘applicable activities’ via email each quarter, identifying any ‘applicable activities’ planned in the six months following notification. Quarterly notification dates are as follows: Q1—April 15; Q2—July 15; Q3—October 15; Q4—January 15. For example, in a notification due on April 15, a covered U.S. person should include all activities planned until October 15 of the same year.

(ii) *Response to BIS questions.* Following a notification of ‘applicable activities’ by a covered U.S. person, the covered U.S. person will receive questions from BIS. The covered U.S. person must respond to all questions within 30 calendar days of receiving the request.

(iii) *Corrections.* If any notification of ‘applicable activities’ or response to BIS questions filed under this section is incomplete when filed, BIS will notify the covered U.S. person and require a revised resubmission within 14 calendar days after BIS provides notice of incompleteness. BIS will continue to require revisions within 14 calendar days of notification if a resubmission remains incomplete.

(iv) *Clarification questions.* If, after receipt of responses described in paragraph (a)(2)(ii) of this section, BIS has additional questions to clarify those responses, the covered U.S. person will provide additional responses to such additional questions within seven (7) calendar days. If the covered U.S. person needs additional time to provide an additional response, it can request an extension from BIS.

(v) *Affirmation of no applicable activities.* For each of the seven quarters following the quarter covered by a notification of ‘applicable activities,’ if the covered U.S. person has no ‘applicable activities’ (i.e., an “applicable activity” that meets the criteria under paragraph (a)(1)(i) or (ii) of this section) to report, they must submit an affirmation of no applicable activities by emailing ai_reporting@bis.doc.gov on the quarterly notification date. If the covered U.S. person submits an affirmation of no applicable activities for seven consecutive quarters, they need not provide BIS with any affirmation thereafter until they have ‘applicable activities’ to report.

(b) *Content, form, and manner of response to BIS questions.* (1) All information submitted under this section shall be filed with BIS in the form and manner that BIS will prescribe in instructions sent to the covered U.S. person after BIS has received a notification of ‘applicable activities.’

(2) BIS will send questions to the covered U.S. person which must address, but may not be limited to, the following topics:

(i) Any ongoing or planned activities related to training, developing, or producing dual-use foundation models, including the physical and cybersecurity protections taken to assure the integrity of that training process against sophisticated threats;

(ii) The ownership and possession of the model weights of any dual-use

⁴Rahman, Owen, and You. “Tracking Large-Scale AI Models” (April 5, 2024), <https://epochai.org/blog/tracking-large-scale-ai-models>.

foundation models, and the physical and cybersecurity measures taken to protect those model weights;

(iii) The results of any developed dual-use foundation model's performance in relevant AI red-team testing, including a description of any associated measures the company has taken to meet safety objectives, such as mitigations to improve performance on these red-team tests and strengthen overall model security; and

(iv) Other information pertaining to the safety and reliability of dual-use foundation models, or activities or risks that present concerns to U.S. national security.

(c) *Definitions.* For purposes of the reports required by paragraph (a) of this section, apply the following definitions.

AI red-teaming means a structured testing effort to find flaws and vulnerabilities in an AI system, often in a controlled environment and in collaboration with developers of AI. In the context of AI, red-teaming is most often performed by dedicated "red teams" that adopt adversarial methods to identify flaws and vulnerabilities, such as harmful or discriminatory outputs from an AI system, unforeseen or undesirable system behaviors, limitations, or potential risks associated with the misuse of the system.

AI model means a component of an information system that implements AI technology and uses computational, statistical, or machine-learning techniques to produce outputs from a given set of inputs.

AI system means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

Artificial intelligence or *AI* has the meaning set forth in 15 U.S.C. 9401(3).

Company means a corporation, partnership, association, or any other organized group of persons, or legal successor or representative thereof. This definition is not limited to commercial or for-profit organizations. For example, the term "any other organized group of persons" may encompass academic institutions, research centers, or any group of persons who are organized in some manner. The term "corporation" is not limited to publicly traded corporations or corporations that exist for the purpose of making a profit.

Covered U.S. person means any individual U.S. citizen, lawful permanent resident of the United States as defined by the Immigration and Nationality Act, entity—including organizations, companies, and corporations—organized under the laws of the United States or any jurisdiction within the United States (including

foreign branches), or any person (individual) located in the United States.

Dual-use foundation model means an AI model that is:

- (i)(A) Trained on broad data;
- (B) Generally uses self-supervision;
- (C) Contains at least tens of billions of parameters;
- (D) Is applicable across a wide range of contexts; and
- (E) Exhibits, or could be easily modified to exhibit, high levels of performance at tasks that pose a serious risk to security, national economic security, national public health or safety, or any combination of those matters, such as by:

(1) Substantially lowering the barrier of entry for non-experts to design, synthesize, acquire, or use chemical, biological, radiological, or nuclear (CBRN) weapons;

(2) Enabling powerful offensive cyber operations through automated vulnerability discovery and exploitation against a wide range of potential targets of cyberattacks; or

(3) Permitting the evasion of human control or oversight through means of deception or obfuscation.

(ii) Models meet this definition even if they are provided to end users with technical safeguards that attempt to prevent users from taking advantage of the relevant unsafe capabilities.

Knowledge has the meaning set out in 15 CFR 772.1.

Large-scale computing cluster means a cluster of computing hardware that meets the technical thresholds provided by the Department in paragraph (a)(1) of this section.

Model weights means the numerical parameters used in the layers of a neural network.

Training or *training run* refers to any process by which an AI model learns from data using computing power. Training includes but is not limited to techniques employed during pre-training like unsupervised learning and employed during fine tuning like reinforcement learning from human feedback.

United States (U.S.) includes the 50 states, the District of Columbia, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands.

Thea D. Rozman Kendler,
Assistant Secretary for Export
Administration.

[FR Doc. 2024-20529 Filed 9-9-24; 8:45 am]

BILLING CODE 3510-JT-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA-R01-OAR-2024-0367; FRL-12222-01-R1]

Outer Continental Shelf Air Regulations; Amendment to State Requirements Incorporated; Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendment to state requirements.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) air regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Commonwealth of Massachusetts is the designated COA. The intended effect of this proposed rule is to amend existing regulations incorporated by reference into the Massachusetts section of EPA's OCS air regulations.

DATES: Written comments must be received on or before October 11, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2024-0367 at <https://www.regulations.gov>, or via email to collins.patrick@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, 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>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air & Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Patrick Collins, Air and Radiation Division, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square (Mail Code 05-MI), Boston, MA 02109, (617) 918-1196, collins.patrick@epa.gov.

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

Table of Contents

- I. Background and Purpose
- II. EPA's Evaluation of Appendix A of Part 55 for Massachusetts
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On September 4, 1992, the EPA promulgated 40 CFR part 55,¹ which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Clean Air Act (CAA). The regulations at 40 CFR part 55 apply to all OCS sources offshore of the states except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) of the CAA requires that the EPA update the OCS requirements as necessary to

maintain consistency with onshore requirements.

On September 17, 2008 (73 FR 53718), the EPA finalized a consistency update of the OCS air regulations pertaining to the requirements of OCS sources in the Commonwealth of Massachusetts. The update was the result of a Notice of Intent (NOI) being submitted on December 7, 2007 by Cape Wind Associates, LLC. The rules incorporated by reference into appendix A of 40 CFR part 55 were applicable provisions of 310 Code of Massachusetts Regulations (CMR) 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; 310 CMR 7.00: Air Pollution Control; and 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies.

On August 24, 2010 (75 FR 51968), the EPA finalized a consistency update of the OCS regulations pertaining to the requirements of OCS sources in the Commonwealth of Massachusetts. This update was the result of EPA's annual review of the Commonwealth of Massachusetts regulations. The rules incorporated by reference into appendix A of 40 CFR part 55 were updates and new requirements of 310 CMR 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; 310 CMR 7.00: Air Pollution Control; and 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies.

A similar action occurred on November 13, 2018 (83 FR 56259) after the submittal of an NOI on December 11, 2017 by Vineyard Wind, LLC, leading to further updates to appendix A of 40 CFR part 55. The rules incorporated through this action were applicable provisions of 310 CMR 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; 310 CMR 7.00: Air Pollution Control; and 310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies, as amended through March 9, 2018.

Lastly, on November 15, 2022 (87 FR 68364) the EPA finalized action to incorporate updates to 40 CFR part 55 after receipt of an NOI on September 9, 2021 by Sunrise Wind, LLC. This final rule incorporated applicable provisions of 310 CMR 4.00: Timely Action Schedule and Fee Provisions; 310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts; and 310 CMR 7.00: Air Pollution

Control, as amended through March 5, 2021.

EPA has received subsequent NOIs for projects and conducted periodic reviews of Massachusetts regulations to ensure all applicable requirements for OCS sources as they relate to attainment and maintenance of federal or state ambient air quality standards and the requirements of part C of title I of the CAA are incorporated by reference into the Massachusetts section of appendix A in 40 CFR part 55. These evaluations have not led to additional requirements incorporated by reference into appendix A, because either a Massachusetts regulation did not change or because any changes to a previously incorporated regulation were not applicable to the attainment and maintenance of federal or state ambient air quality standards for OCS sources.

However, through EPA's implementation of the OCS air permitting program, we have become aware that 310 CMR 4.03: Annual Compliance Assurance Fee and 310 CMR 7.12: U Source Registration are unnecessarily incorporated into appendix A of 40 CFR part 55. These two regulations are either (1) implemented by existing EPA programs and thus duplicative or (2) not rationally related to the attainment or maintenance of federal or state ambient air quality standards or to the requirements of part C of title I of the CAA. EPA is proposing to remove these previously approved regulations incorporated into appendix A of 40 CFR part 55 since our last amendment on November 15, 2022. *See* 87 FR 68364. Additional rationale for this proposed action is provided below.

II. EPA's Evaluation of Appendix A of Part 55 for Massachusetts

310 CMR 4.03: Annual Compliance Assurance Fee outlines the procedure for issuance and collection of a source's annual compliance assurance fees imposed in the COA. Per 40 CFR 55.10, for sources in the inner or outer OCS where the EPA is the permitting authority, the EPA will collect permit fees consistent with fee requirements outlined in 40 CFR part 71. Per the provisions of 40 CFR 55.12(e), no rule or regulation that EPA finds to be arbitrary or capricious will be incorporated into this part. EPA's review finds that 310 CMR 4.03: Annual Compliance Assurance Fee should be removed from part 55 as EPA is the permitting authority for sources located within the inner OCS for which Massachusetts is the designated COA. As such, EPA is required to calculate and collect operating permit fees from

¹ The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

OCS sources for which Massachusetts is the COA in accordance with 40 CFR part 71. By removing this provision from the incorporated requirements of Massachusetts regulations into appendix A of 40 CFR part 55, EPA remains consistent with other sections of part 55 and creates regulatory certainty on what fee requirements operating permit sources must adhere to.

310 CMR 7.12: U Source Registration is used to determine source registration requirements for OCS sources. This section is also used to direct how information regarding emission inventories is collected, assisting regular recordkeeping processes. As part of the registration, the given source is required to report emissions on an annual reporting schedule to the Massachusetts Department of Environmental Protection. However, for OCS sources with permits issued by EPA, it is impractical for sources to report to Massachusetts for activities occurring in federal waters many miles from the state's jurisdictional boundary. This information should instead be reported directly to the EPA. As such, our review did not find these regulations to be rationally related to the attainment and maintenance of Federal or State ambient air quality standards or to the requirements of part C of title I of the Act and will be removed in accordance with 40 CFR 55.12(d)(2).

EPA is proposing to remove 310 CMR 4.03: Annual Compliance Assurance Fee and 310 CMR 7.12: U Source Registration before the majority of recently permitted OCS sources where Massachusetts is the COA become subject to these requirements in an effort to create regulatory clarity in the obligations these sources are subject to.

The EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Region Office listed in the **ADDRESSES** section of this **Federal Register**.

III. Proposed Action

The EPA is proposing to remove two regulations currently incorporated by reference in appendix A of part 55 for OCS sources where the Commonwealth of Massachusetts is the COA. The regulations that the EPA is proposing to remove are applicable subsections provisions of: 310 CMR 4.00: Timely Action Schedule and Fee Provisions; and 310 CMR 7.00: Air Pollution

Control. Based on a review of part 55 (1) 310 CMR 4.03: Annual Compliance Assurance Fee is duplicative of existing federal rules and (2) 310 CMR 7.12: U Source Registration is no longer determined to be rationally related to the attainment and maintenance of Federal or State ambient air quality standards or to the requirements of part C of title I of the Act. Further, these changes are proposed to ensure consistency of the OCS permitting program in accordance with part 55 requirements.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in sections II and III of this preamble, the EPA is proposing to remove 310 CMR 4.03 and 310 CMR 7.12 from the incorporation by reference of the Commonwealth of Massachusetts Requirements Applicable to OCS Sources, dated March 5, 2021, as listed in appendix A to 40 CFR part 55. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region 1 Regional 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

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by the EPA. For that reason, this action:

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

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

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

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

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

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

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

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

In addition, this rule does have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), 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, nor does it impose substantial direct compliance costs on tribal governments or preempt tribal law.

This action does not impose any new information collection burden under the Paperwork Reduction Act. *See* 44 U.S.C. 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulation at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060-0249.² This action does not impose a new information burden under the Paperwork Reduction Act because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A.

² OMB's approval of the ICR can be viewed at www.reginfo.gov.

List of Subjects in 40 CFR Part 55		Dated: September 3, 2024.
Environmental protection,	Intergovernmental relations, Lead,	David Cash,
Administrative practice and procedure,	Nitrogen dioxide, Outer continental	<i>Regional Administrator, EPA Region 1.</i>
Air pollution control, Carbon monoxide,	shelf, Ozone, Particulate matter,	[FR Doc. 2024–20119 Filed 9–10–24; 8:45 am]
Incorporation by reference,	Permits, Reporting and recordkeeping	BILLING CODE 6560–50–P
	requirements, Sulfur oxides, Volatile	
	organic compounds.	

Notices

Federal Register

Vol. 89, No. 176

Wednesday, September 11, 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2024–0055]

Notice of Request for Extension of Approval of an Information Collection; Self-Certification Medical Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations permitting applicants to self-certify certain medical statements when applying for positions with the Federal Government.

DATES: We will consider all comments that we receive on or before November 12, 2024.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2024–0055 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2024–0055, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30

p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations related to the use of a self-certification medical statement, contact Mr. Jason Grams, Branch Chief, Human Resources Policy, Human Resources Division, MRPBS, APHIS, 250 Marquette Plaza, Suite 410, Minneapolis, MN 55401; (612) 336–3292; email: jason.c.grams@usda.gov. For information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator; (301) 851–2533; email: joseph.moxey@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Self-Certification Medical Statement.

OMB Control Number: 0579–0196.

Type of Request: Extension of approval of an information collection.

Abstract: Marketing and Regulatory Programs (MRP) of the U.S. Department of Agriculture facilitate the domestic and international marketing of U.S. agricultural products and protect the health of domestic animal and plant resources. Resource management and administrative services, including human resources management, for MRP agencies are provided by the MRP Business Services (MRPBS) unit of the Animal and Plant Health Inspection Service (APHIS).

MRP agencies are authorized by 5 CFR part 339 and 29 CFR part 1630 to obtain medical information from applicants and employees for positions that have approved medical standards due to duties that are arduous or hazardous, or require a certain level of health status or fitness. These agencies have positions with duties that extend beyond sedentary and require specific medical standards and/or physical requirements to be performed successfully and safely. The medical qualifications standards for appointment to the covered positions listed in the MRP Medical Examination Requirements Charts are justified on the basis that the duties are arduous or hazardous and require a certain level of health status and fitness, and the nature of the positions involves a high degree of responsibility towards the public.

This information collection is necessary for making a preliminary determination regarding a candidate's

physical fitness and ability to perform the duties of a covered position. MRP uses the Self-Certification Medical Statement for positions requiring verification of fitness and ability for duty. Applicants may also submit a request for waiver of standards and requirements. Inability to collect this information would adversely affect the MRP agencies' ability to make employment decisions and determinations regarding an applicant's physical fitness to safely and efficiently perform assigned duties.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.176 hours per response.

Respondents: Private citizens.

Estimated annual number of respondents: 175.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 176.

Estimated total annual burden on respondents: 31 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request

for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 5th day of September 2024.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–20544 Filed 9–10–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2024–0018]

Notice of Request To Renew an Approved Information Collection: Accredited Laboratories

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, FSIS is announcing its intention to renew an approved information collection regarding accredited laboratories. There are no changes to the existing information collection. The approval for this information collection will expire on February 28, 2025.

DATES: Submit comments on or before November 12, 2024.

ADDRESSES: FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to <https://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.

- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2024–0018. Comments received in response to this docket will be made available for public inspection and

posted without change, including any personal information, to <https://www.regulations.gov>.

Docket: For access to background documents or comments received, call 202–720–5046 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

SUPPLEMENTARY INFORMATION:

Title: Accredited Laboratories.

OMB Number: 0583–0158.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, and properly labeled.

To ensure compliance with the FMIA, PPIA, EPIA and FSIS' implementing regulations, FSIS periodically collects samples of meat, poultry, and egg products and sends them to FSIS laboratories for analysis. These tests are conducted to determine the content of food chemistry components and the presence of pathogens, violative concentrations of veterinary drugs, or other chemical residues to verify whether establishments meet regulatory requirements. In addition, establishments collect samples for analysis at other laboratories, including accredited non-Federal laboratories.

FSIS accredits non-Federal analytical laboratories under its Accredited Laboratory Program (ALP) (see 9 CFR part 439). The ALP monitors each non-Federal laboratory currently accredited under the program to ensure that these laboratories are operating at a level of quality that produces reliable results that can be used to support decisions in establishments' food safety systems.

FSIS is requesting renewal of an approved information collection regarding the ALP. There are no changes to the existing information collection. The approval for this information collection will expire on February 28, 2025.

Any non-Federal laboratory that is applying for the FSIS' ALP regarding the

testing of meat, poultry, or egg products, needs to complete FSIS Form 10,110–2, *Application for FSIS Accredited Laboratory Program* (see 9 CFR part 439). State or private laboratories only submit the application once for entry into the program. FSIS uses the information collected by the form to help assess the laboratory applying for admission to the FSIS Accredited Laboratory program.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 0.5 hours per year to complete a laboratory form.

Respondents: Laboratories.

Estimated Number of Respondents: 2.

Estimated Number of Annual

Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1 hour.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; 202–720–5046.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: <https://www.fsis.usda.gov/federal-register>.

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update*, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service that provides automatic and customized access to selected food safety news and information. This service is available at: <https://www.fsis.usda.gov/subscribe>. The available information ranges from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/forms/electronic-forms>, from any USDA office, by calling (866) 632-9992, or by writing a letter

addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, DC 20250-9410;

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

Paul Kiecker,
Administrator.

[FR Doc. 2024-20553 Filed 9-10-24; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for 2030 Census Small-Scale Tests, Evaluations, and Database Updates

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed new information collection, Generic Clearance for 2030 Census Small-Scale Tests, Evaluations, and Database Updates, prior to the submission of the information collection request (ICR) to the Office of Management and Budget (OMB) for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before November 12, 2024.

ADDRESSES: Interested persons are invited to submit written comments by

email to Michael S. Snow (dcmd.pra@census.gov). Please reference Generic Clearance for 2030 Census Small-Scale Tests, Evaluations, and Database Updates in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2024-0024, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Michael S. Snow, Supervisory Program Analyst, Decennial Program Management Office, Decennial Census Management Division, (301) 763-9912, dcmd.pra@census.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request OMB approval for a three-year period for a new Generic Information Collection to conduct a series of studies to research and evaluate how to improve data collection activities for 2030 Census programs at the Census Bureau. In addition, the Census Bureau developed recommendations from lessons learned from previous censuses and received suggestions from stakeholders, focus groups, and results of earlier research studies, on updating address databases and other datasets used to plan and conduct larger tests and the 2030 Census itself. Under this Generic Information Collection, the Census Bureau also plans to test implementing some of those recommendations and suggestions. These studies and updates will explore how the Census Bureau can improve efficiency, data quality, and response rates and reduce respondent burden in future census and survey tests, operations, evaluations, experiments, and database updates. Having this Generic Information Collection will also provide the quick turn-around necessary for conducting unplanned tests and

updates as well as unanticipated collections in response to disasters declared at the international, national, regional, or state level that could have a major impact on the development and planning of Census Bureau operations. For example, the Census Bureau may need to seek help from umbrella organizations for Group Quarters or Transitory Locations to provide address lists for emergency and transitional shelters during natural disasters.

Because this information collection will operate as a generic clearance, the estimated number of respondents and annual reporting hours requested cover both the known and yet to be determined tests and updates. A generic clearance is needed for these tests, evaluations, and database updates because the exact number and explicit details of each test, evaluation, or update to be performed is yet to be determined. Once information collection plans are defined, they will be submitted on an individual basis to keep OMB informed as these tests, evaluations, updates progress.

For example, in one group of tests that are already being planned, the Census Bureau intends to test the use of new and improved data collection techniques for self-response and interviewer data-collection tasks surrounding and following the ongoing census and survey operations. Tests may also involve frame update tasks surrounding and following those same operations. These tests and other research and evaluation may cover the following: developing alternative enumeration or follow-up questionnaires; resolving usability issues; conducting interviews or debriefings; and non-English language training and interviews. For instance, the Census Bureau has an ongoing and iterative program that uses nationally representative samples and that plans for two more iterations by the end of 2027. To study enumeration, the Census Bureau may conduct the enumeration directly with a household member or knowledgeable respondent. The questions asked in these studies will be typical census or survey and related questions, along with potential attitudinal and satisfaction debriefing questions.

In addition, the Census Bureau plans to implement some recommendations from small-scale testing and stakeholder input to adjust and improve how it conducts support activities for the development of 2030 Census operations. An example might be having universities, hospital systems, and federal, state, and local agencies compile up-to-date names, addresses,

and points of contact for group quarters and transitory locations.

The Census Bureau roughly estimates that, during the three-year period of this clearance, two currently planned tests will go to 216,000 respondents a piece (70,000 burden hours each); four potential experiments/tests on Group Quarters will average 50–60 respondents (an average of 15–20 burden hours) and as-yet unknown tests, evaluations, or database updates might go to 25,000 to 37,500 respondents (7,300 to 10,000 burden hours). In addition, the Census Bureau might have to collect information from 30,000 to 55,000 respondents (5,000 to 9,000 burden hours) in response to declared disasters.

II. Method of Collection

The information will be collected through observations, self-response (including but not limited to internet and paper forms), in-person interviews, and/or telephone interviews.

III. Data

OMB Control Number: 0607–XXXX.

Form Number(s): Not yet determined.

Type of Review: Regular submission, New Information Collection Request.

Affected Public: Individuals or households; Business or other for-profit organizations; Not-for-profit institutions; State, Local or Tribal government; Federal government.

Estimated Number of Respondents: 162,000–175,000 per year.

Estimated Time per Response: 18 minutes.

Estimated Total Annual Burden Hours: 51,000–55,400 hours annually.

Estimated Total Annual Cost to Public: There is no cost to the respondent other than time to answer the information request.

Respondent's Obligation: Mandatory or Voluntary, depending on cited authority.

Legal Authority: Title 13, Sections 141, 191, 193, 221, 223.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to

respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Sheleen Dumas,

Departmental PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–20547 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–19–2024]

Foreign-Trade Zone (FTZ) 50; Authorization of Production Activity; Space Exploration Technologies Corp.; (Internet Satellite Dish Kits); Hawthorne, California

On May 9, 2024, Space Exploration Technologies Corp. (dba SpaceX) submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 50, in Hawthorne, California.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 42423, May 15, 2024). On September 6, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 6, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–20562 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–21–2024]

Foreign-Trade Zone (FTZ) 41; Authorization of Production Activity; Mercury Marine; (Electric Inboard and Outboard Motors); Fond Du Lac, Wisconsin

On May 9, 2024, Mercury Marine submitted a notification of proposed production activity to the FTZ Board for its facilities within FTZ Subzone 41H, in Fond Du Lac, Wisconsin.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (89 FR 42836, May 16, 2024). On September 6, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 6, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–20561 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–836]

Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results 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) determines that producers and exporters subject to this administrative review did not make sales of subject merchandise at less than normal value during the period of review (POR) February 1, 2022, through January 31, 2023.

DATES: Applicable September 11, 2024.

FOR FURTHER INFORMATION CONTACT:

Christopher Williams or Allison Hollander, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington DC 20230; telephone: (202) 482–5166 or (202) 482–2805, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2024, Commerce published in the **Federal Register** the preliminary results of this administrative review of the antidumping duty order¹ on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea) and rescinded the administrative review of two companies.² A summary of the events that occurred since Commerce published the *Preliminary Results*, as well as a full discussion of the issues raised by parties for these final results, are discussed in the Issues and Decision Memorandum.³ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁴ The deadline for the final results of this administrative review is now September 6, 2024. Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the *Order* is CTL plate from Korea. For a full description of the scope of the *Order*, see the Issues and Decision Memorandum.⁵

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are listed as an appendix to this notice and addressed in the Issues and Decision Memorandum. The Issues and 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://>

¹ See Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products from France, India, Indonesia, Italy, Japan and the Republic of Korea, 65 FR 6585 (February 10, 2000) (*Order*).

² See *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review; 2022–2023*, 89 FR 15814 (March 5, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

³ See Memorandum, “Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Certain Aluminum Foil from the Republic of Türkiye; 2021–2022,” dated concurrently with, and hereby adopted by this notice (Issues and Decision Memorandum).

⁴ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁵ See Issues and Decision Memorandum.

[access.trade.gov](https://access.trade.gov/public/FRNoticesListLayout.aspx). In addition, a complete version of the Issues and Decision Memorandum can be accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Changes Since the Preliminary Results

Commerce evaluated the comments in the case and rebuttal briefs and record evidence and made no changes from the *Preliminary Results*. For a discussion of the comments, see the Issues and Decision Memorandum.

Final Results of Review

Commerce determines that the following estimated weighted-average dumping margins exist for the period February 1, 2022, through January 31, 2023:

Producer and/or exporter	Weighted-average dumping margin (percent)
Dongkuk Steel Mill Co., Ltd ..	0.00
Hyundai Steel Company	0.00

Disclosure

Normally, Commerce will disclose the calculations performed in connection with the final results to parties in this proceeding within five days of the date of public announcement or, if there is no public announcement, within five days of the date of publication of the final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results*, there are no new calculations to disclose.

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because the weighted-average dumping margins for Dongkuk and Hyundai Steel are zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with the *Final Modification for Reviews*.⁶

For entries of subject merchandise during the POR produced by Dongkuk

⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

or Hyundai Steel for which they did not know that the merchandise was destined to the United States, we will instruct CBP to liquidate those entries at the all-others rate in the *Final Determination* of the investigation of sales at less than fair value (LTFV), *i.e.*, 0.98 percent,⁷ if there is no rate for the intermediate company(ies) involved in the transaction.⁸

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).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review or a prior segment of the proceeding (*e.g.*, the original LTFV investigation) but the producer is, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 0.98 percent,⁹ the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

⁷ See, *e.g.*, *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021*, 87 FR 40489, 40490 (July 7, 2022).

⁸ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁹ See footnote 9, *supra*.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy 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. Changes Since the *Preliminary Results*
- V. Discussion of the Issues
 - Comment 1: CEP Offset for Dongkuk
 - Comment 2: CEP Offset for Hyundai Steel
 - Comment 3: Hyundai Steel's Short-Term Interest Rates
- VI. Recommendation

[FR Doc. 2024–20580 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: 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 certain producers and exporters of certain cut-to-length carbon-quality steel plate (CTL plate) from the Republic of Korea (Korea) received countervailable subsidies during the period of review (POR) January 1, 2022, through December 31, 2022.

DATES: Applicable September 11, 2024.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Patrick Barton, 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) 482–4793 or (202) 482–0012, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 2024, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited interested parties to comment.¹ On June 21, 2024, Commerce extended the deadline for issuing the final results of this review until August 30, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for the final results is now September 6, 2024.

For a complete description of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.⁴ A list of topics

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022*, 89 FR 15825 (March 5, 2024) (89 FR 15825) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

² See Memorandum, “Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2022,” dated June 21, 2024.

³ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁴ See Memorandum, “Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Cut-To-Length Carbon-Quality Steel Plate from the Republic of Korea; 2022,” dated concurrently with,

discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and 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 Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order ⁵

The product covered by this *Order* is certain cut-to-length carbon-quality steel plate. For a complete description of the scope of this *Order*, see the Issues and Decision Memorandum.

Analysis of Subsidy Programs and Comments Received

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 countervailable, we find that there is a subsidy, *i.e.*, a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.⁶ The subsidy programs under review, and the issues raised in case and rebuttal briefs submitted by the interested parties, are discussed in the Issues and Decision Memorandum.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, and for the reasons explained in the Issues and Decision Memorandum, we made modifications to Dongkuk Steel Mill Co., Ltd.'s calculations for these final results of review.

Final Results of Administrative Review

We determine the following net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022:

and hereby adopted by, this notice (Issues and Decision Memorandum).

⁵ See *Notice of Amended Final Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from India and the Republic of Korea*; and *Notice of Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000) (*Order*).

⁶ 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.

⁷ Commerce finds Hyundai Green Power to be cross-owned with Hyundai Steel.

Producer/exporter	Subsidy rate (percent <i>ad valorem</i>)
Dongkuk Steel Mill Co., Ltd ..	2.01
Hyundai Steel Company ⁷	2.21

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice 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 of subject merchandise covered by this review. 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).

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies subject to this review for 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. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 violation subject to sanction.

Notice to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4) and 19 CFR 351.221(b)(5).

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy 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. Subsidies Valuation Information
- V. Analysis of Programs
- VI. Discussion of the Issues
 - Comment 1: Whether the Provision of Electricity Was Consistent With Market Principles During the POR
 - Comment 2: Whether the Provision of Electricity for Less Than Adequate Renumeration (LTAR) Program Is Specific
 - Comment 3: Whether Commerce Should Revise its Analysis of the Largest Electricity Consuming Industries
 - Comment 4: Whether To Modify the Benefit Calculation for the Provision of Electricity for LTAR Program
 - Comment 5: Whether the Provision of Korean Allocation Units (KAUs) Constitutes a Financial Contribution
 - Comment 6: Whether the Provision of KAUs Confers a Countervailable Benefit
 - Comment 7: Whether the Korea Emissions Trading System Program Is Specific
 - Comment 8: Whether the Carbon-Neutral Facilities Grant Program Is Countervailable
 - Comment 9: Whether the Research and Development Grants Under the Industrial Technology Innovation Promotion Act Are Countervailable
 - Comment 10: Whether Commerce Should Correct Dongkuk Steel Mill Co., Ltd.'s Sales Denominator
- VII. Recommendation

[FR Doc. 2024–20581 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–823]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Final Results of Expedited First Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on Laminated Woven Sacks (LWS) from the Socialist Republic of Vietnam (Vietnam) would likely lead to continuation or recurrence of dumping at the levels indicated in the “Final Results of the Sunset Review” section of this notice.

DATES: Applicable September 11, 2024.

FOR FURTHER INFORMATION CONTACT: Luke Caruso, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2081.

SUPPLEMENTARY INFORMATION:

Background

After Commerce initiated the sunset review¹ of the *Order*,² pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), domestic interested parties³ timely submitted complete notices of intent to participate in,⁴ and adequate substantive responses regarding, the review.⁵ The domestic interested parties claimed domestic interested party status under section 771(9)(C) of the Act as producers of the domestic like product in the United States.⁶ Commerce did not receive a substantive response from any respondent interested party, nor was a hearing requested. On June 21, 2024, Commerce notified the U.S. International Trade Commission that it did not receive adequate substantive responses from respondent interested parties.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*.

Scope of the Order

The merchandise covered by the *Order* is laminated woven sacks. For a complete description of the scope of the

Order, see the Issues and Decision Memorandum.⁸

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review is contained in the accompanying Issues and Decision Memorandum.⁹ A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and 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 Issues and Decision Memorandum can be directly accessed at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail are weighted-average margins up to a weighted-average margin of up to 292.61 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely 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 violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of sunset review in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

⁸ See Memorandum, “Decision Memorandum for the Final Results of the First Expedited Sunset Review of the Antidumping Duty Order on Laminated Woven Sacks from the Socialist Republic of Vietnam,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

⁹ *Id.*

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy 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. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely To Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024–20569 Filed 9–10–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Preliminary Results and Partial Rescission 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 finds that certain exporters of passenger vehicle and light truck tires (passenger tires) from the People’s Republic of China (China) made sales of subject merchandise at prices below normal value (NV) during the period of review (POR) August 1, 2022, through July 31, 2023. Commerce also preliminarily finds that five companies had no entries of subject merchandise during the POR, and that it is appropriate to rescind this review with respect to 14 companies because all requests for review of these companies were withdrawn. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 11, 2024.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatryan, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6412.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 2023, based on timely requests for review, in accordance with

¹ See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 35073 (May 1, 2024).

² See *Laminated Woven Sacks from the Socialist Republic of Vietnam: Antidumping Duty and Countervailing Duty Orders*, 84 FR 753 (June 4, 2019) (*Order*).

³ The domestic interested parties are Polytex Fiber LLC and ProAmpac Holdings Inc.

⁴ See Domestic Interested Parties’ Letter, “Domestic Interested Party Notice Of Intent To Participate,” dated May 10, 2024.

⁵ See Domestic Interested Parties’ Letter, “Domestic Interested Party Substantive Response,” dated May 30, 2024 (Substantive Response).

⁶ *Id.*

⁷ See Commerce’s Letter, “Sunset Reviews initiated on May 1, 2023,” dated June 21, 2024.

19 CFR 351.221(c)(1)(i), we initiated this administrative review of the antidumping duty order on passenger tires from China.¹ This review covers 33 exporters of the subject merchandise.

In April 2024, we extended the preliminary results of this review until August 29, 2024.² On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.³ The deadline for these preliminary results is now September 5, 2024.

For a complete description of the events that followed the initiation of this administrative review, see the Preliminary Decision Memorandum.⁴ 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>. A list of topics discussed in the Preliminary Decision Memorandum is included in Appendix I.

Scope of the Order

The products covered by the *Order* are passenger tires from China. For a full description of the scope of the *Order*, see the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review in the

Federal Register. Between October 2023 and January 2024, all parties withdrew their requests for review by the 90-day withdrawal deadline for the companies identified in Appendix III.⁵ Because all parties timely withdrew their requests for a review of these exporters, consistent with 19 CFR 351.213(d)(1), Commerce is rescinding this review, in part, with respect to these companies.

Furthermore, pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no entries of subject merchandise during the POR for which liquidation is suspended.⁶ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.⁷ Therefore, for an administrative review of a company to be conducted, there must be a suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the antidumping duty assessment rate calculated for the POR.⁸

In January and August 2024, we notified parties of our intent to rescind this administrative review, in part, with respect to the companies identified in Appendix III, with the exception of Shandong Linglong Tyre Co., Ltd. (Shandong Linglong), because there were no suspended entries of subject merchandise produced or exported by these companies during the POR, and we invited interested parties to comment.⁹ Therefore, we determine

that, in the absence of any suspended entries of subject merchandise from these five companies listed in Appendix III during the POR, we are rescinding the administrative review for these companies (excluding Shandong Linglong), in accordance with 19 CFR 351.213(d)(3).

With regard to Shandong Linglong, we received comments from this company, stating that it had reviewable entries during the POR.¹⁰ We intend to request further information regarding such entries, which we will consider for the final results.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213. We calculated constructed export prices in accordance with section 772(b) of the Act. Because China is a non-market economy (NME) country, within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Separate Rates

As discussed in the Preliminary Decision Memorandum, Commerce preliminarily finds that Shandong Hongsheng Rubber Technology Co., Ltd. (Shandong Hongsheng) and Shandong Haohua Tire Co., Ltd. (Shandong Haohua) have not established their eligibility for a separate rate. Moreover, Commerce preliminarily finds that seven other companies under review did not establish their eligibility for separate rates because they failed to provide either a separate rate application, a separate rate certification, or a no-shipment certification (if they had previously received a separate rate). As such, we preliminarily determine that Shandong Hongsheng, Shandong Haohua, and these seven other companies are part of the China-wide entity. See Appendix II for a complete list of these companies.

Commerce preliminarily determines that the following companies have demonstrated their eligibility for a separate rate in this review:¹¹ (1) Zhaoqing Junhong Co., Ltd (Junhong); (2) Jiangsu General Science Technology Co., Ltd.; (3) Qingdao Transamerica Tire

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 71829 (October 18, 2023); see also *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 80 FR 47902 (August 10, 2015) (*Order*).

² See Memorandum, "Extension of Deadline for Preliminary Results of the 2022–2023 Antidumping Duty Administrative Review," dated April 4, 2024.

³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁴ See Memorandum, "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2022–2023," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁵ See Dynamic Tire's Letter, "Sailun Withdrawal Request of Administrative Review," dated October 24, 2023; Sumitomo Rubber's Letter, "Withdrawal of Request for Review," dated November 14, 2023; Hankook Tire's Letter, "Withdrawal of Request for Administrative Review for Jiangsu Hankook," dated December 13, 2023; Shandong New Continent's Letter, "SNC Withdrawal of Request for Antidumping Administrative Review," dated December 27, 2023; Giti's Letter, "Withdrawal of Request for Administrative Review," dated January 2, 2024; Qingdao Fullrun's and Qingdao Lakesea's Letters, "Withdrawal of Request for Administrative Review," dated January 5, 2024; Qingdao Keter's, Sanli Tire's, and Qingdao Sunfulcess' Letter, "Withdrawal of Request for Administrative Review," dated January 11, 2024; Triangle Tyre's Letter, "Withdrawal of Request for Administrative Review," dated January 11, 2024; and Hankook Tire's Letter, "Withdrawal of Request for Administrative Review," dated January 15, 2024.

⁶ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); see also *Certain Carbon and Alloy Steel Cut- to Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

⁷ See 19 CFR 351.212(b)(2).

⁸ See 19 CFR 351.213(d)(3).

⁹ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated January 29, 2024; and Memorandum, "Notice of Intent to Rescind Review on Shandong Transtone," dated August 22, 2024.

¹⁰ See Shandong Linglong's Letter, "Shandong Linglong Comments on the Department's Notice of Intent to Rescind," dated February 5, 2024.

¹¹ See Preliminary Decision Memorandum at "Separate Rates."

Industrial Co., Ltd.; and (4) Winrun Tyre Co., Ltd.

The Act and Commerce’s regulations do not address the establishment of a rate to apply to companies not selected for individual 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 an investigation, for guidance when determining the dumping margin for respondents that are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding dumping margins that are zero, *de minimis*, or based entirely on facts available. For these preliminary results, we preliminarily determined a dumping margin for the separate rate respondents using the calculated rate of the mandatory respondent, Junhong, which is not zero or *de minimis*, or determined entirely on the basis of facts available.

China-Wide Entity

Commerce’s policy regarding conditional review of the China-wide entity applies to this administrative review.¹² Because no party requested a review of the China-wide entity, the China-wide entity is not under review. Therefore, the rate previously established for the China-wide entity (*i.e.*, 76.46 percent) remains the China-wide entity rate this review.¹³

Preliminary Results of Review

We preliminarily determine that the following estimated weighted-average dumping margins exist for the period August 1, 2022, through July 31, 2023:

Exporter	Weighted-average dumping margin (percent)
Jiangsu General Science Technology Co., Ltd	28.76
Qingdao Transamerica Tire Industrial Co., Ltd	28.76
Winrun Tyre Co., Ltd	28.76
Zhaoqing Junhong Co., Ltd ..	28.76

¹² See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013).

¹³ See *Order*, 80 FR at 47904, n.19.

Disclosure and Public Comment

Commerce intends to disclose the calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days after the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice in the **Federal Register** regarding all issues, except those related to POR entries for Shandong Linglong.¹⁴ Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.¹⁵ 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.¹⁶

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 brief 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.¹⁷ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the 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 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).¹⁸

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via

¹⁴ Because we are requesting additional information regarding Shandong Linglong, we intend to set a separate briefing schedule related to any issues specific to this company at a later date.

¹⁵ 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 Final Rule*).

¹⁶ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁷ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁸ See *APO and Service Final Rule*.

ACCESS. Requests should contain: (1) the party’s name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Oral presentations at the hearing will be limited to issues raised in the briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce’s electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Assessment Rates

Upon completion of this administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.¹⁹ Pursuant to 19 CFR 351.212(b)(1), because Junhong reported the entered value for its U.S. sales, we calculated importer-specific *ad valorem* 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 sales. Where either a respondent’s weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.²⁰

Pursuant to Commerce’s assessment practice,²¹ for entries that were not reported in the U.S. data submitted by Junhong, we will instruct to CBP to liquidate such entries at the China-wide rate. Additionally, where Commerce determines that an exporter under review had no shipments of subject merchandise to the United States during the POR, any suspended entries of subject merchandise that entered under that exporter’s CBP case number during the POR will be liquidated at the dumping margin assigned to the China-wide entity.

For respondents not individually examined in this administrative review that qualified for a separate rate, the assessment rate will be equal to the dumping margin assigned to Junhong in the final results of this review.²² Finally,

¹⁹ See 19 CFR 351.212(b)(1).

²⁰ *Id.*

²¹ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

²² See *Drawn Stainless Steel Sinks from the People’s Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–*

we intend to liquidate entries containing subject merchandise exported by the companies under review that we determine in the final results to be part of the China-wide entity at the China-wide rate of 76.46 percent.

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated antidumping duties, where applicable. 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).

Finally, for the companies for which we are rescinding this review, we intend to instruct CBP to assess antidumping duties on all appropriate entries at a rate equal to the cash deposit rate 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). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis*, then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed exporters not listed in the final results of review that have separate rates, the cash deposit rate will continue to be the exporter's

weighted-average dumping margin published of the most recently-completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for China-wide entity (*i.e.*, 76.46 percent);²³ and (4) for all exporters of subject merchandise which are not located in China and are not eligible for a separate rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Final Results

Commerce intends to issue the final results of this administrative review, including the results of its analysis of all issues raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.²⁴

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing 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 and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

²³ See Order, 80 FR at 47904, n.19.

²⁴ See section 751(a)(3)(A) of the Act.

Appendix II

Companies Preliminary Found To Be Part of the China-Wide Entity

1. Kinforest Tyre Co., Ltd.
2. Qingdao Fullrun Tyre Tech Corp., Ltd.
3. Qingdao Powerich Tyre Co., Ltd.
4. Qingdao Vitour United Corp.
5. Shandong Haohua Tire Co., Ltd.
6. Shandong Hongsheng Rubber Technology Co., Ltd.
7. Shandong Wanda Boto Tyre Co., Ltd.
8. Tianjin Wanda Tyre Group Co., Ltd.
9. Zhongce Rubber Group Company, Ltd.

Appendix III

Companies Rescinded From Review

Rescission Based on Withdrawal of Review Requests

1. Anhui Jichi Tire Co., Ltd.;
2. Giti Radial Tire (Anhui) Company, Ltd.; Giti Tire (Anhui) Company, Ltd.; Giti Tire (Chongqing) Company, Ltd.; Giti Tire (Fujian) Company, Ltd.; Giti Tire Global Trading Pte. Ltd.; Giti Tire Greatwall Company, Ltd.; Giti Tire (Hualin) Company, Ltd.; Giti Tire (Yinchuan) Company, Ltd.
3. Hankook Tire China Co., Ltd.
4. Jiangsu Hankook Tire Co., Ltd.
5. Qingdao Fullrun Tyre Corp., Ltd.
6. Qingdao Keter International Co., Limited
7. Qingdao Lakesea Tyre Co., Ltd.
8. Qingdao Sunfulcess Tyre Co., Ltd.
9. Dynamic Tire Corp.; Shandong Jinyu Industrial Co.; Sailun Tire International Corp.; Husky Tire Corp.; Seatex PTE. Ltd.; Seatex International Inc.; Sailun Group (HongKong) Co., Limited; Sailun HK; Sailun Jinyu HK; Sailun Group Co., Ltd.; Sailun Group; Sailun Jinyu Group Co., Ltd.; and Sailun Jinyu
10. Sailun Tire Americas Inc.
11. Shandong New Continent Tire Co., Ltd.
12. Shandong Province Sanli Tire Manufacture Co., Ltd.
13. Sumitomo Rubber (Changshu) Co., Ltd.; Sumitomo Rubber (Hunan) Co., Ltd.; and Sumitomo Rubber Industries, Ltd.
14. Triangle Tyre Co., Ltd.

Rescission Based on No Suspended Entries

1. Prinx Chengshan (Shandong) Tire Co., Ltd.
2. Qingdao Nexen Tire Corporation.
3. Shandong Changfeng Tyres Co., Ltd.
4. Shandong Qilun Rubber Co., Ltd.
5. Shandong Transtone Tyre Co., Ltd.

[FR Doc. 2024–20582 Filed 9–10–24; 8:45 am]

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2015, 81 FR 29528 (May 12, 2016), and accompanying PDM at 10–11, unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments*; 2014–2015, 81 FR 54042 (August 15, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-910]

Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of this expedited third sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on circular welded carbon-quality steel pipe from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping at the level indicated in the "Final Results of Expedited Sunset Review" section of this notice.

DATES: Applicable September 11, 2024.

FOR FURTHER INFORMATION CONTACT: Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-5193.

SUPPLEMENTARY INFORMATION:**Background**

After Commerce initiated this sunset review¹ of the *Order*,² pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), domestic interested parties³ timely submitted complete notices of intent to participate in,⁴ and an adequate substantive response regarding, the review.⁵ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product in the United

States.⁶ Commerce did not receive a substantive response from any respondent interested party, nor was a hearing requested. Consequently, on June 21, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from any respondent interested parties.⁷ As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order*. On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁸ The deadline for the final results of this expedited sunset review is now September 5, 2024.

Scope of the Order

The merchandise subject to the *Order* is circular welded carbon-quality steel pipe from China. For a complete description of the scope of the *Order*, see the Issues and Decisions Memorandum.⁹

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum.¹⁰ A list of the sections in the Issues and Decision Memorandum is in the appendix to this notice. The Issues and 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 <http://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>.

⁶ See Domestic Interested Parties' Intent to Participate.

⁷ See Commerce's Letter, "Sunset Reviews Initiated on May 1, 2024," dated June 21, 2024; see also 19 CFR 351.218(3)(1)(ii)(C)(1).

⁸ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," inadvertently dated June 22, 2024, rather than July 22, 2024.

⁹ See Memorandum, "Decision Memorandum for the Final Results of the Expedited Sunset Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

¹⁰ *Id.*

Final Results of Expedited Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to continuation or recurrence of dumping, and that the magnitude of the dumping margins likely to prevail are weighted-average dumping margins up to 85.55 percent.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely 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 violation which is subject to sanction.

Notification to Interested Parties

We are issuing, and publishing notice of, the results of this sunset review in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2) and 19 CFR 351.221(c)(5)(ii).

Dated: September 5, 2024.

Abdelali Elouaradia,

Deputy 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. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 1. Likelihood of Continuation or Recurrence of Dumping
 2. Magnitude of the Margins of Dumping Likely To Prevail
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024-20564 Filed 9-10-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Massachusetts Institute of Technology et al.; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of

¹ See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 35073 (May 1, 2024).

² See *Notice of Antidumping Duty Order: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 42547 (July 22, 2008) (*Order*).

³ The domestic interested parties are Bull Moose Tube Company (Bull Moose), Maruichi American Corporation (Maruichi American), Nucor Tubular Products Inc. (Nucor Tubular) and Zekelman Industries (Zekelman).

⁴ See Bull Moose, Maruichi, and Zekelman's Letter, "Notice of Intent to Participate," dated May 16, 2024; see also Nucor Tubular's Letter, "Notice of Intent to Participate in Sunset Review," dated May 16, 2024, (Domestic Interested Parties' Intent to Participate).

⁵ See Domestic Interested Parties' Letter, "Substantive Response to Notice of Initiation," dated May 31, 2024 (Domestic Interested Parties' Substantive Response).

1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On July 25, 2024, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. See *Application(s) for Duty-Free Entry of Scientific Instruments*, 89 FR 60354–55, July 25, 2024 (Notice). We received no public comments.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order.

Docket Number: 24–010. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02114. Instrument: Fiber Laser. Manufacturer: PreciLasers, China. Intended Use: The instrument will be used to study Potassium 40 atoms that are fermionic alkali atoms; their alkali electronic structure makes them straight-forward to trap and manipulate using lasers. The potassium 40 atoms will first be cooled sympathetically by sodium 23 atoms, then transferred into a series of optical traps, which will use the lasers ordered from PreciLasers. The final optical trap will be a 2D square optical lattice, where additional optical potentials and magnetic fields will be applied, and the response of the atoms observed through a microscope.

Docket Number: 24–012. Applicant: The University of Texas at Austin, BEG—JJ Pickle Research Campus, 10100 Burnet Road, Building 130, Austin, TX 78758.

Instrument: Ocean Alpha SL20-Autonomous Survey Boat. Manufacturer: Ocean Alpha Group Ltd., China. Intended Use: According to the applicant, the instrument is intended to be used as an unmanned surface vehicle (USV) that is designed to survey the depths of inland waters where it is not accessible for UT Austin staff. USV will have complimentary use of the in-house airborne lidar system (Lecia Chiroptera-5) where lidar derived depths require verification. UT Austin staff will be able to deploy the USV from a shoreline, and control it remotely, with safety.

Docket Number: 24–017. Applicant: State University of New York at Stony Brook, 100 Nicolls Road, 230 Admin Building, Stony Brook, NY 11794. Instrument: 556 nm high power, narrow linewidth laser. Manufacturer: Shanghai Precilasers Technology Co., Ltd., China.

Intended Use: According to the applicant, the instrument is intended to be used in a quantum optics apparatus using Ytterbium atoms in an ultrahigh vacuum environment. The experiment will laser cool and trap single Ytterbium atoms and interface them with single photons in an optical cavity. The importance is the long-lived clock states of Ytterbium atoms, as well as the hyperfine ground states, both of which are excellent to use as qubits in a quantum device and store quantum information for a long time.

Docket Number: 24–018. Applicant: Harvard University, 17 Oxford Street, Cambridge, MA 02138. Instrument: Single Frequency Fiber Laser. Manufacturer: Shanghai Precilasers Technology Co., Ltd., China. Intended Use: According to the applicant, the instrument is intended to be used to explore methods of taking full control of the internal and external degrees of freedom of single diatomic molecules (calcium monofluoride, CaF) for various quantum applications. The interest is in quantum simulation of lattice-spin models using CaF molecules trapped in an optical tweezer array. To load CaF molecules into an optical tweezer array, they must be first laser slowed and laser cooled to very low temperature and high density. The laser cooling transition used here is one of the only two desired strong electronic transitions in CaF molecules that possesses a diagonal Frank-Condon factor which supports scattering many photons with reasonable number of repump lasers. This laser system will be used to perform the above work in a research laboratory in the Department of Physics at Harvard University. The research work enabled by this system is part of the training of graduate students, undergraduate students, and postdoctoral research fellows.

Docket Number: 24–019. Applicant: Harvard University, Department of Physics, 60 Oxford Street, Cambridge, MA 02138. Instrument: Fiber Laser. Manufacturer: Shanghai Precilasers Technology Co., Ltd., China. Intended Use: According to the applicant, the instrument is intended to be used for Ytterbium (Yb) atom's dipolar interaction. When Yb atoms excite their Rydberg states, there will be a strong dipolar interaction between the atoms. This interaction is also long-range. The main techniques used will be a) ultrahigh vacuum techniques and b) laser stabilization techniques. The instrument will be used to educate undergraduate and graduate students.

Dated: September 5, 2024.

Gregory W. Campbell,

Director, Subsidies and Economic Analysis, Enforcement and Compliance.

[FR Doc. 2024–20534 Filed 9–10–24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–824]

Laminated Woven Sacks From the Socialist Republic of Vietnam: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on Laminated Woven Sacks (LWS) from the Socialist Republic of Vietnam (Vietnam) would be likely to lead to continuation or recurrence of countervailing subsidies at the levels indicated in the “Final Results of Sunset Review” section of this notice.

DATES: Applicable September 11, 2024.

FOR FURTHER INFORMATION CONTACT: Luke Caruso, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2081.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2019, Commerce published in the **Federal Register** the CVD order on LWS from Vietnam.¹ On May 1, 2024, Commerce initiated the first sunset review of the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On May 10, 2024, Commerce received a timely notice of intent to participate from Polytex Fiber LLC and ProAmpac Holdings Inc. (collectively, the domestic interested parties) within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic interested parties claimed interested

¹ See *Laminated Woven Sacks from the Socialist Republic of Vietnam: Antidumping Duty and Countervailing Duty Orders*, 84 FR 25753 (June 4, 2019) (*Order*).

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 35073 (May 1, 2024) (*Initiation Notice*).

³ See Domestic Interested Parties' Letter, “Domestic Interested Party Notice Of Intent To Participate,” dated May 10, 2024.

party status under sections 771(9)(E) and (F) of the Act.

On May 30, 2024, Commerce received an adequate substantive response to the *Initiation Notice* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁴ We received no substantive responses from any other interested parties, including the Government of Vietnam, and no interested party requested a hearing. On June 21, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties, and that Commerce would conduct an expedited (120-day) sunset review of the *Order*,⁵ pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)–(C).

Scope of the Order

The product covered by the *Order* is LWS. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁶

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum. A list of the issues discussed in the Issues and Decision Memorandum is attached as the appendix to this notice. The Issues and 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 Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNotices/ListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Company	Subsidy rate (percent <i>ad valorem</i>)
Duong Vinh Hoa Packaging Company Limited	3.02
Xinsheng Plastic Industry Co., Ltd	198.87
All Others	3.02

Administrative Protective Order

This notice serves as the only 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). Timely written notification of the 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 violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: September 5, 2024.
Abdelali Elouaradia,
Deputy 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. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 - 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 - 2. Net Countervailable Subsidy Rates Likely to Prevail
 - 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024–20567 Filed 9–10–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meeting of the Ocean Exploration Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Ocean Exploration Advisory Board (OEAB). OEAB members will discuss and provide advice on the Federal ocean exploration program, with a particular emphasis on the topics identified in the section on Matters to Be Considered.

DATES: The announced meeting is scheduled for Wednesday, October 9, 2024 from 9:00 a.m.–4:00 p.m. (ET) through Thursday, October 10, 2024 from 9:00 a.m.–3:00 p.m. (ET).

ADDRESSES: This meeting will be held on the NOAA Campus in Silver Spring, MD. Information about how the public can observe virtually will be posted to the OEAB website at <https://oeab.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Mr. David Turner, Designated Federal Officer, Ocean Exploration Advisory Board, National Oceanic and Atmospheric Administration, David.Turner@NOAA.gov or (859) 327–9661.

SUPPLEMENTARY INFORMATION: NOAA established the OEAB under the Federal Advisory Committee Act (FACA) and legislation that gives the agency statutory authority to operate an ocean exploration program and to coordinate a national program of ocean exploration. The OEAB advises NOAA leadership on strategic planning, exploration priorities, competitive ocean exploration grant programs, and other matters as the NOAA Administrator requests.

OEAB members represent government agencies, the private sector, academic institutions, and not-for-profit institutions involved in all facets of ocean exploration—from advanced technology to public engagement.

In addition to advising NOAA leadership, NOAA expects the OEAB to help to define and develop a national program of ocean exploration—a network of stakeholders and partnerships advancing national priorities for ocean exploration.

Matters To Be Considered: NOAA laboratory and program science reviews are conducted every five years to evaluate the quality, relevance, and performance of research conducted in NOAA OAR laboratories and programs. On October 9–10, 2024, the Ocean Exploration Advisory Board will conduct a five-year program review of the NOAA Ocean Exploration program. Three focus areas have been identified for the review: Ensuring a National Program of Ocean Exploration; Technological Innovation and

⁴ See Domestic Interested Parties’ Letter, “Domestic Interested Party Substantive Response,” dated May 30, 2024 (Substantive Response).
⁵ See Commerce’s Letter, “Sunset Reviews Initiated on May 1, 2024,” dated June 21, 2024.
⁶ See Memorandum, “Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Laminated Woven Sacks from Vietnam,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Application; and, Public Engagement and Education.

The agenda and other meeting materials will be made available on the OEAB website at <https://oeab.noaa.gov/>.

Status: The meeting will be open to the public via remote access. View the agenda on the OEAB website to confirm access information and the public comment period schedule.

The OEAB expects that public statements at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to three minutes. The Designated Federal Officer must receive written comments by Sept. 30, 2024, to provide sufficient time for OEAB review. Written comments received after Sept. 30, 2024, will be distributed to the OEAB but may not be reviewed prior to the meeting date. Comments should be submitted to Designated Federal Officer David.Turner@NOAA.gov.

Special Accommodations: Requests for sign language interpretation or other auxiliary aids should be directed to the Designated Federal Officer by Sept. 30, 2024.

David Holst,

*Chief Financial and Administrative Officer,
Office of Oceanic and Atmospheric Research,
National Oceanic and Atmospheric
Administration.*

[FR Doc. 2024–20432 Filed 9–10–24; 8:45 am]

BILLING CODE 3510-KA-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE278]

Adjustment of Fees for Seafood Inspection Services

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

ACTION: Notice of fee schedule.

SUMMARY: The NMFS Seafood Inspection Program (SIP) is notifying program participants that its fee schedule for fiscal year 2025 will remain as established on November 1, 2022.

DATES: The fee schedule applies to services rendered as of October 1, 2024, until notified otherwise.

FOR FURTHER INFORMATION CONTACT: Steven Wilson, Office of International Affairs, Trade, and Commerce, 301–427–8350 or at steven.wilson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS operates a fee-for-service Seafood Inspection Program under the authorities of the Agricultural Marketing Act of 1946, as amended, the Fish and Wildlife Act of 1956, and the Reorganization Plan No. 4 of 1970. The regulations implementing the SIP are contained in 50 CFR parts 260 and 261. The SIP offers inspection, grading, and certification services, including the use of official quality grade marks which indicate that specific products have been federally inspected. Those wishing to participate in the program must request the services and submit specific compliance information. Since 1992, NMFS implemented inspection services based on guidelines recommended by the National Academy of Sciences, known as Hazard Analysis Critical Control Point (HACCP).

Under the implementing regulations for the SIP, fees are reviewed at least annually to ascertain that the hourly fees charged are adequate to recover the costs of the services rendered. Any necessary adjustments to fees are made in accordance with the requirements of 50 CFR 260.81 and are notified to program participants as stipulated at 50 CFR 260.70. This **Federal Register** notice serves to inform program participants of the fee schedule, which remains unchanged.

SIP costs used for the calculation of user fees include all relevant direct and indirect costs to the program, and applicable administrative overhead and surcharges. SIP fees must be set to promote full cost recovery of the program absent other appropriations.

SIP costs include all field operations, program administrative overhead, and management, and include expenses for labor for inspectors, facilities, information technology infrastructure, and other operational costs. SIP fees are set to recover those costs based on revenue projections from expected billable service hours and the number of certificates requests. Forecasts of demand for services use historical data on actual billed services that are adjusted annually for inflation, known events that might affect the predicted output of billable services, and seasonality of when forecasted services will take place throughout the year.

NMFS will assess its fees as outlined in this notice, which will apply until notified otherwise. Fees will be charged to contract and non-contract customers requesting services as listed below. The cost of other applicable services rendered will be recovered through fee collection using the base rate of \$238 per hour.

Fees and Charges for the U.S. Department of Commerce Seafood Inspection Program

The per hour fees and charges for fishery products inspection services are not being revised and will remain as established on November 1, 2022, for fiscal year 2025 and will be assessed as follows. Any travel associated with a billable service will be an additional charge.

Contract Rates

- Regular time: Services provided during any 8-hour shift.
- Overtime: Services provided outside the inspector's normal work schedule.
- In addition to any hourly service charge, a night differential fee equal to 10 percent of the employee's hourly salary will be charged for each hour of service provided after 6 p.m. and before 6 a.m. A guarantee of payment is required for all contracts equal to 3 months of service or \$10,000, whichever is greater.

Non-Contract Rates

- Regular time: Services provided within the inspector's normal work schedule, Monday through Friday.
- Overtime: Services provided outside the inspector's normal work schedule.
- Any services under contract in excess of the contracted hours will be charged at the non-contract rate.

TABLE 1—CONTRACT AND NON-CONTRACT HOURLY RATES

Contract Rates:	
Regular	\$238
Overtime	357
Sundays & Holidays	476
All Non-Contract Rates:	
Regular Time	357
Overtime	536
Sundays & Holidays	714

Certificates

All certificate requests, whether or not a product inspection was conducted, will be billed at a set flat rate of \$97 per request.

Additional information about, and applications for, Program services and fees may be obtained from NMFS (see **FOR FURTHER INFORMATION CONTACT** section).

Dated: September 5, 2024.

Alexa Cole,

*Director, Office of International Affairs,
Trade, and Commerce, National Marine
Fisheries Service.*

[FR Doc. 2024–20558 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE274]

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 (Council) Halibut and Sablefish Individual Fishing Quota Committee (IFQ Committee) will meet September 26, 2024.

DATES: The meeting will be held on Thursday, September 26, 2024, from 8:30 a.m. to 1 p.m., Alaska Time.

ADDRESSES: The meeting will be a web conference. Join online through the link at <https://meetings.npfmc.org/Meeting/Details/3060>.

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 via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Anna Henry, Council staff; phone: (907) 271–2809; email: anna.henry@noaa.gov. For technical support, please contact our admin Council staff, email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:**Agenda**

Thursday, September 26, 2024

The IFQ Committee agenda will include: (a) IFQ program review; (b) committee draft Terms of Reference; and (c) other business. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/3060> prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at <https://meetings.npfmc.org/Meeting/Details/3060>.

Public Comment

Public comment letters will be accepted and should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/3060>.

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

Dated: September 6, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–20565 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XE276]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Fishery Monitoring Advisory Committee (FMAC) will meet September 25, 2024.

DATES: The meetings will be held on Wednesday, September 25, 2024, from 8:30 a.m. to 4 p.m., Alaska Time.

ADDRESSES:

Meeting address: For members attending in Seattle, the in-person component of the meeting will be held at the Alaska Fishery Science Center in room 2079, 7600 Sand Point Way NE, Building 4, Seattle, WA 98115.

If you plan to attend in-person, you need to notify Sara Cleaver (sara.cleaver@noaa.gov) at least 2 days prior to the meeting (or 2 weeks prior if you are a foreign national). You will also need a valid U.S. Identification Card. If you are attending virtually, join the meeting online through the link at <https://meetings.npfmc.org/Meeting/Details/3059>.

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 in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Sara Cleaver, Council staff; telephone: (907) 271–2809; email: sara.cleaver@noaa.gov. For technical support, please contact Council administrative staff, email: npfmc.admin@noaa.gov.

SUPPLEMENTARY INFORMATION:**Agenda**

Wednesday, September 25, 2024

The September 2024 FMAC agenda will include: (a) updates since the last FMAC meeting; (b) the Observer availability discussion paper; (c) review

of NFWF (National Fish and Wildlife Foundation) EM (electronic monitoring) proposals, and (d) other business. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/3059> 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: posted at <https://meetings.npfmc.org/Meeting/Details/3059>. If you are attending the meeting in-person, please note that all attendees will be required to wear a mask.

Public Comment

Public comment letters will be accepted and should be submitted electronically to posted at <https://meetings.npfmc.org/Meeting/Details/3059>.

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

Dated: September 6, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–20566 Filed 9–10–24; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION**Sunshine Act Meetings**

TIME AND DATE: 4:00 p.m. EDT, Monday, September 9, 2024.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Litigation matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.cftc.gov/>.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

(Authority: 5 U.S.C. 552b.)

Dated: September 9, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–20781 Filed 9–9–24; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION**[Docket No.: ED–2024–SCC–0110]****Agency Information Collection Activities; Comment Request; Regional Educational Laboratory Midwest: Teacher Preparation Program Completion: What Factors Play a Role?****AGENCY:** Institute of Education Sciences (IES), Department of Education (ED).**ACTION:** Notice.**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).**DATES:** Interested persons are invited to submit comments on or before November 12, 2024.**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2024–SCC–0110. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the www.regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–1200.**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Christopher Boccanfuso, (202) 219–0373.**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the

Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Regional Educational Laboratory Midwest: Teacher Preparation Program Completion: What Factors Play a Role?

OMB Control Number: 1850–NEW.

Type of Review: New ICR.

Respondents/Affected Public:

Individuals or Households.

Total Estimated Number of Annual Responses: 421.

Total Estimated Number of Annual Burden Hours: 220.

Abstract: The U.S. Department of Education seeks clearance for the recruitment and data collection protocols for the REL Midwest research study, Teacher Preparation Program Completion: What Factors Play a Role? The study, scheduled for the 2024/25 school year, will focus on understanding factors influencing the completion of traditional undergraduate teacher preparation programs. This is crucial as traditional teacher preparation programs are the main sources of new teachers, yet the number of bachelor's degrees in education has declined by 18 percent between 2010 and 2020.

This study aims to address two main research questions: (1) How do the demographic and academic characteristics of students in traditional undergraduate teacher preparation programs differ between completers and noncompleters? and (2) How do personal and contextual factors relate to students' completion of traditional teacher preparation programs?

The study will collect quantitative survey data and qualitative interview data from students who completed and did not complete traditional undergraduate teacher preparation programs, supplemented by administrative data from teacher

preparation programs. This approach will allow the study to gather information on personal and contextual factors not captured in administrative data, such as the ability to complete unpaid student teaching, perceptions of the teaching profession, and other intrinsic motivations and external conditions that influence completion.

The urgency to improve teacher candidate retention and graduation rates is driven by long-standing teacher shortages and a desire to increase racial/ethnic and gender diversity in the teacher workforce to mirror the composition of K–12 students in the United States. Findings from this study aim to inform program and policy-level solutions to support teaching candidates, particularly those from diverse backgrounds, ensuring they persist through their teacher preparation programs.

Dated: September 5, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–20437 Filed 9–10–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION**[Docket No.: ED–2024–SCC–0086]****Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Expanding Opportunity Through Quality Charter Schools Program: Technical Assistance To Support Monitoring, Evaluation, Data Collection, and Dissemination of Best Practices****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 new information collection request (ICR).**DATES:** Interested persons are invited to submit comments on or before October 11, 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 Andrew Brake, (202) 453-6136.

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: Expanding Opportunity through Quality Charter Schools Program: Technical Assistance to Support Monitoring, Evaluation, Data Collection, and Dissemination of Best Practices.

OMB Control Number: 1810-NEW.

Type of Review: New ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 110.

Total Estimated Number of Annual Burden Hours: 172.

Abstract: This request is for a new OMB approval to collect data necessary to support the following: Charter School Programs (CSP) Data Collection, Risk Assessment, and Monitoring. This collection will replace previously approved 1855-0016 collection in order to obtain a new OMB number that is associated with the sub-agency this collection has moved to following a reorganization. The collection of information is still necessary in order to perform data collection, data analysis, risk assessment, and grantee monitoring for the CSP. However, the number of respondents is expected to decrease over the life of this collection, as new

grantees (from FY 2022 onward) use the Charter Online Management and Performance System (COMPS) for their reporting (OMB Control Numbers 1810-0781 through 1810-0787). This collection will remain in place for the older grantees that still have active CSP grants.

This data collection is coordinated with the EDFacts Initiative (EDFacts) to reduce respondent burden and fully utilize data submitted by States and available to the U.S. Department of Education (ED) through the EDFacts database. Specifically, under the current data collection, ED collects CSP grant award information from grantees (State agencies, charter management organizations, and some schools) to create a new database of current CSP-funded charter schools and award amounts. Once complete, ED merges performance information extracted from the EDFacts database with the database of CSP-funded charter schools. Together, these data allow ED to monitor CSP grant performance and analyze data related to accountability for academic performance, financial integrity, and program effectiveness.

Dated: September 5, 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. 2024-20430 Filed 9-10-24; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2024-SCC-0112]

Agency Information Collection Activities; Comment Request; Consolidated Annual Report (CAR) for the Carl D. Perkins Career and Technical Education Act of 2006

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), 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 November 12, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-

2024-SCC-0112. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave, SW, LBJ, Room 4C210, Washington, DC 20202-1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202-245-7405.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Consolidated Annual Report (CAR) for the Carl D.

Perkins Career and Technical Education Act of 2006.

OMB Control Number: 1830–0569.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 54.

Total Estimated Number of Annual Burden Hours: 13,554.

Abstract: This information collection is used by the U.S. Department of Education to gather annual performance and financial data from eligible agencies under the Carl D. Perkins Career and Technical Education Act of 2006. We are proposing to revise the ICR to provide data specifications for the numerators and denominators used to calculate the performance indicators so that they are measured in a manner that is consistent with the law, collect data on participants in the middle grades, and, to the extent these data available, collect data on the education and employment outcomes of CTE concentrators who have exited secondary education or who have completed a postsecondary program that is disaggregated by placement type.

Dated: September 6, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–20614 Filed 9–10–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0111]

Agency Information Collection Activities; Comment Request; Carl D. Perkins Career and Technical Education Act State Plan Guide

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), 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 November 12, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–

2024–SCC–0111. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at ICDocketMgr@ed.gov. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Braden Goetz, 202–245–7405.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Carl D. Perkins Career and Technical Education Act State Plan Guide.

OMB Control Number: 1830–0029.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 54.

Total Estimated Number of Annual Burden Hours: 2,808.

Abstract: This information collection is used by the Department to request State Plans and annual revisions under the Carl D. Perkins Career and Technical Education Act of 2006. We are proposing to revise the ICR to provide data specifications for the numerators and denominators used to calculate the laws performance indicators so that they are measured in a manner that is consistent with the statute, reduce the collection of potentially duplicative information, give States more time to report education and employment outcomes to improve the accuracy and completeness of these data, and to improve the consistency of performance data reported by States. The revision also would collect data on State policies on serving students in the middle grades, how States define certain terms that are not defined in law, and how States identify industry-recognized credentials.

Dated: September 6, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–20611 Filed 9–10–24; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission. This meeting will be open to the public.

DATES: September 26, 2024, 1:00 p.m. EST.

ADDRESSES: The Election Assistance Commission hearing room at 633 3rd St. NW, Washington, DC 20001. The meeting is open to the public and will be live streamed on the U.S. Election Assistance Commission YouTube Channel: <https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw>.

FOR FURTHER INFORMATION CONTACT:

Kristen Muthig, Telephone: (202) 897-9285, Email: kmuthig@eac.gov.

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94-409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will hold a public meeting “Working Together: Supporting the 2024 Elections through Federal Partnerships.”

Agenda: A little over a month from Election Day, the EAC will host a public meeting with representatives from federal election partners to discuss their roles in elections, their work throughout 2024 to support state and local election officials, and the security of elections. Panelists will give remarks and respond to questions from the EAC Commissioners.

The EAC will accept written comments and questions from members of the public. If you would like to participate, please email clearinghouse@eac.gov with your full name and question or comment no later than 12:00 p.m. E.T. on September 25, 2024.

The full agenda will be posted in advance on the events page of the EAC website: www.eac.gov/events/2024/09/26/working-together-supporting-2024-elections-through-federal-partnerships.

Background: Through the Help America Vote Act of 2002 (HAVA), the EAC is tasked with maintaining a clearinghouse of election administration information. To fulfill this mission, the EAC provides best practices recommendations, training materials, and other resources for election officials. This meeting will provide information on emerging topics for the upcoming election to help inform the general public and members of the media.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024-20660 Filed 9-9-24; 4:15 pm]

BILLING CODE 4810-71-P

DEPARTMENT OF ENERGY**Privacy Act of 1974; System of Records**

AGENCY: U.S. Department of Energy.

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A-108 and A-130, the Department of Energy (DOE or the

Department) is publishing notice of a modification to an existing Privacy Act system of records. DOE proposes to amend System of Records DOE-18 Financial Accounting System. This System of Records Notice (SORN) is being modified to align with new formatting requirements, published by OMB, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. While there are no substantive changes to the “Categories of Individuals” or “Categories of Records” sections covered by this SORN, substantive changes have been made to the “System Locations,” “Routine Uses,” and “Administrative, Technical and Physical Safeguards” sections to provide greater transparency. Changes to “Routine Uses” include new provisions related to responding to breaches of information held under a Privacy Act SORN as required by OMB’s Memorandum M-17-12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017). Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

DATES: This modified SORN will become applicable following the end of the public comment period on September 11, 2024 unless comments are received that result in a contrary determination.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503, and to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm. 8H-085, Washington, DC 20585, by facsimile at (202) 586-8151, or by email at privacy@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm 8H-085, Washington, DC 20585, by facsimile at (202) 586-8151, by email at privacy@hq.doe.gov, or by telephone at (240) 686-9485.

SUPPLEMENTARY INFORMATION: On January 9, 2009, DOE published a Compilation of its Privacy Act systems of records, which included System of Records DOE-18 Financial Accounting System. This notice proposes amendments to the system locations section of that system of records by removing the following system locations where DOE-18 is no longer applicable: Golden Field Office, National Nuclear

Security Administration (NNSA) Service Center Albuquerque, Atlanta Regional Support Office, Office of Energy Efficiency and Renewable Energy, Idaho Operations Office, National Energy Technology Laboratory (Pittsburg), Naval Petroleum and Oil Shale Reserves, Naval Petroleum and Oil Reserves, Naval Petroleum Reserves in California, NNSA Nevada Site Office, Office of Scientific and Technical Information, Philadelphia Regional Support Office, and Seattle Regional Support Office. In the “Routine Uses” section, this modified notice deletes a previous routine use concerning efforts responding to a suspected or confirmed loss of confidentiality of information as it appears in DOE’s compilation of its Privacy Act systems of records (January 9, 2009) and replaces it with one to assist DOE with responding to a suspected or confirmed breach of its records of Personally Identifiable Information (PII), modeled with language from OMB’s Memorandum M-17-12, “Preparing for and Responding to a Breach of Personally Identifiable Information” (January 3, 2017). Further, this notice adds one new routine use to ensure that DOE may assist another agency or entity in responding to the other agency’s or entity’s confirmed or suspected breach of PII, as appropriate, as aligned with OMB’s Memorandum M-17-12. The “Categories of Records in the System” now includes the following: “office location, business phone, business cell phone, and business email address.” An administrative change required by the FOIA Improvement Act of 2016 extends the length of time a requestor is permitted to file an appeal under the Privacy Act from 30 to 90 days. Both the “System Locations” and “Administrative, Technical and Physical Safeguards” sections have been modified to reflect the Department’s usage of cloud-based services for records storage. Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

SYSTEM NAME AND NUMBER:

DOE-18 Financial Accounting System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Systems leveraging this SORN may exist in multiple locations. All systems storing records in a cloud-based server are required to use government-approved cloud services and follow National Institute of Standards and

Technology (NIST) security and privacy standards for access and data retention. Records maintained in a government-approved cloud server are accessed through secure data centers in the continental United States.

U.S. Department of Energy, Headquarters, 1000 Independence Avenue SW, Washington, DC 20585.

U.S. Department of Energy, Headquarters, 19901 Germantown Road, Germantown, MD 20874.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 550 Main Street, Rm 7-010, Cincinnati, OH 45202.

U.S. Department of Energy, Office of Science, Chicago Office, Consolidated Service Center, 9800 South Cass Avenue, Lemont, IL 60439.

U.S. Department of Energy, Office of Science, Consolidated Service Center, P.O. Box 2001, Oak Ridge, TN 37831.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122-0109.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Schenectady Naval Reactors, P.O. Box 1069, Schenectady, NY 12301.

U.S. Department of Energy, Hanford Field Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635-6711.

U.S. Department of Energy, Southwestern Power Administration, One West Third Street, Suite 1500, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

U.S. Department of Energy, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228-8213.

SYSTEM MANAGER(S):

Headquarters: Director, Office of the Chief Financial Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

Field Offices: The field Chief Financial Officers at the "System Locations" listed above are the system managers for their respective portions of this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; the Government Accountability Office Policy and Procedures Manual; Statement of Federal Financial Accounting Standards published by the Government Accountability Office and the Office of Management and Budget; Debt Collection Improvement Act of 1996, 31 U.S.C. 3512; 5 U.S.C. 5701-5709; Federal Property Management Regulations 101-107; Treasury Financial Manual; Executive Order 12009, "Providing for the Effectuation of the Department of Energy Organization Act"; and Executive Order 9397, "Numbering System for Federal Accounts Relating to Individual Persons."

PURPOSE(S) OF THE SYSTEM:

Records in this system are maintained and used by DOE to substantiate obligations and payments to individuals for goods and services received by the agency and to record and manage the Department's accounts receivables.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, current and former contractor employees, vendors and others who are either due money from or owe money to DOE, including the National Nuclear Security Administration (NNSA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security numbers, telephone numbers, office locations, business phone numbers, business cellphones, and business email addresses, dates of birth, employment dates, gender, taxpayer identification numbers, amounts owed, and services or goods received, amounts due, underpayments, overpayments, or other accounting information, invoice numbers, servicing bank name and address, bank account numbers, amounts and status of claims; history of claims, including any collection actions taken.

RECORD SOURCE CATEGORIES:

Subject individual, contracting officer, and accounting records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the appropriate local, Tribal, State, or Federal agency when records, alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether

arising by general statute or particular program pursuant thereto.

2. A record from this system may be disclosed as a routine use to a Federal agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance, revocation, or denial of a security clearance or other classified access, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

3. A record from this system may be disclosed as a routine use for the purpose of an investigation, settlement of claims, or the preparation and conduct of litigation to (1) persons representing the Department in the investigation, settlement or litigation, and to individuals assisting in such representation; (2) others involved in the investigation, settlement, and litigation, and their representatives and individuals assisting those representatives; (3) witnesses, potential witnesses, or their representatives and assistants; and (4) any other persons who possess information pertaining to the matter when it is necessary to obtain information or testimony relevant to the matter.

4. A record from this system may be disclosed as a routine use to other Federal agencies, consumer reporting agencies for acquiring credit information, and collection agencies to aid in the collection of outstanding debts owed to the Federal Government.

5. A record from this system may be disclosed as a routine use to Defense Manpower Data Center, Department of Defense, the United States Postal Service, and other Federal, State, or local agencies to identify and locate, through computer matching, individuals indebted to DOE who are receiving Federal salaries or benefit payments. Information from the match will be used to collect the debts by voluntary repayment, by administrative offset, or by salary offset procedures.

6. A record from this system may be disclosed as a routine use to the Internal Revenue Service (1) to collect the debt by offset against the debtor's tax refunds under the Federal Tax Refund Offset Program, and (2) to obtain the mailing address of a taxpayer to collect a debt owed to the DOE. Subsequent disclosure by DOE to a consumer reporting agency is limited to the purpose of obtaining a commercial credit report on the

particular taxpayer. The mailing address information will not be used for any other DOE purpose or disclosed by DOE to another Federal, State, or local agency which seeks to locate the same individual for its own debt collection purpose.

7. A record from this system may be disclosed as a routine use to the Department of Treasury for the purpose of administrative offset and debt recovery under section 31001 (m)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

8. A record of this system may be disclosed as a routine use to the Department of Treasury for the purpose of paying creditors for services or goods provided to the Department.

9. A record from this system may be disclosed as a routine use to a “consumer reporting agency” as defined by the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Federal Claims Collections Act of 1966, 31 U.S.C. 3701(a)(3), in accordance with 31 U.S.C. 3711(f).

10. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

11. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent’s signed request for assistance.

12. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department’s efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

13. A record from this system may be disclosed as a routine use to another

Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored as paper records, electronic media, or magnetic tapes.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, taxpayer identification number, voucher, invoice, or payment reports.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposition of these records is in accordance with the National Archives and Records Administration-approved records disposition schedule with a retention of 6 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- *Administrative:* Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.

- *Technical:* Computerized records systems are safeguarded on Departmental networks configured for

role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by NIST and DOE directives and guidance.

- *Physical:* Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel and each person granted access to the system must be an individual authorized to use or administer the system.

RECORD ACCESS PROCEDURES:

The Department follows the procedures outlined in title 10 CFR 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, corrected, or records disclosed or corrected only at the request of the proper person.

CONTESTING RECORD PROCEDURES:

Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words “PRIVACY ACT APPEAL” should appear in capital letters on the envelope and the letter. Appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Avenue SW, Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a system of records contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester’s

complete name and the time period for which records are sought.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:
None.

HISTORY:

This SORN was last published in the **Federal Register**, 74 FR 1020–1022, on January 9, 2009.

Signing Authority

This document of the Department of Energy was signed on September 5, 2024, by Ann Dunkin, Senior Agency Official for Privacy, 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 September 6, 2024.

Jennifer Hartzell,

*Alternate Federal Register Liaison Officer,
U.S. Department of Energy.*

[FR Doc. 2024–20554 Filed 9–10–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

[Project No. 7153–018]

**Consolidated Hydro New York, LLC;
Notice of Reasonable Period of Time
for Water Quality Certification
Application**

On August 27, 2024, the New York State Department of Environmental Conservation (New York DEC) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR 121.5, from Consolidated Hydro New York, LLC in conjunction with the above captioned project on August 27, 2024. Pursuant to section 4.34(b)(5) of the Commission's regulations,¹ we hereby notify New York DEC of the following:

Date of Receipt of the Certification Request: August 27, 2024

Reasonable Period of Time to Act on the Certification Request: One year, August 27, 2025.

If the New York DEC fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: September 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–20594 Filed 9–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

**Federal Energy Regulatory
Commission**

[Project No. 1962–227]

**Pacific Gas and Electric Company;
Notice of Application Accepted for
Filing and Soliciting Comments,
Motions To Intervene, and Protests**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Temporary Variance of Flow Requirements.

b. *Project No:* 1962–227.

c. *Date Filed:* August 16, 2024.

d. *Applicant:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Rock Creek-Cresta Hydroelectric Project.

f. *Location:* The project is located on the North Fork Feather River, upstream of Lake Oroville, near the Town of Tobin, in Butte and Plumas Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Chadwick McCready, License Coordinator; Pacific Gas and Electric Company, P.O. Box 28209, Oakland, CA 94604; Phone: (530) 685–5710.

i. *FERC Contact:* Katherine Schmidt, Phone: (415) 369–3348, katherine.schmidt@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protests:* September 20, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>.

www.ferc.gov/docs-filing/ecomment.asp. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–1962–227. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a temporary reduction in minimum instream flows in the Rock Creek and Cresta reaches of the North Fork Feather River to facilitate a dive inspection of the spillway plunge pools and toes of both dams. Beginning October 1, 2024 and ending on October 5, 2024, minimum instream flows would be reduced from 390 cubic feet per second (cfs) in the Rock Creek Reach and from 200 cfs in the Cresta Reach, during a 'normal' water year type, to 100 cfs in both reaches. All increases or decreases in flows would occur following previously approved ramping rates under the project license.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email FERCOnlineSupport@ferc.gov, for TTY, call (202) 502–8659. Agencies may

¹ 18 CFR 4.34(b)(5).

obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: September 5, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-20590 Filed 9-10-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2997-031]

South Sutter Water District; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2997-031.

c. *Date filed:* July 1, 2019, and amended December 28, 2023.

d. *Applicant:* South Sutter Water District.

e. *Name of Project:* Camp Far West Hydroelectric Project.

f. *Location:* The existing project is located on the Bear River in Yuba, Nevada, and Placer Counties, California. The project, with the proposed project boundary modifications, would occupy a total of 2,674 acres. No federal or tribal lands occur within or adjacent to the project boundary or along the Bear River downstream of the project.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. Hayden Cornwell, General Manager, South Sutter Water District, 2464 Pacific Avenue, Trowbridge, California 95659.

i. *FERC Contact:* Quinn Emmering, (202) 502-6382, *quinn.emmering@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All timely responses to our March 16, 2021 Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions will still be considered. To the extent that the amendment necessitates any changes to, or new comments, recommendations, or terms and conditions, we encourage refiling updated responses.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms

and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at <https://ferconline.ferc.gov/FEROnline.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/Quick.aspx>. For assistance, please contact FERC Online Support at FEROnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Camp Far West Hydroelectric Project (P-2997-031).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis at this time.

l. The existing Camp Far West Hydroelectric Project operates to provide water during the irrigation season, generate power, and meet streamflow requirements for the Bear River. The project includes: (1) a 185-foot-high, 40-foot-wide, 2,070-foot-long, zoned, earth-filled main dam; (2) a 45-foot-high, 20-foot-wide, 1,060-foot-long, earth-filled south wing dam; (3) a 25-foot-high, 20-foot-wide, 1,460-foot-long, earth-filled north wing dam; (4) a 15-foot-high, 20-foot-wide, 1,450-foot-long, earth-filled north dike; (5) a 1,886-acre reservoir with a gross storage capacity of about 93,737 acre-feet at the normal maximum water surface elevation (maximum water elevation) of 300 feet (NGVD 29); (6) an overflow spillway with a 15-foot-wide concrete approach apron, 300-foot-long ungated, ogee-type concrete structure, and a 77-foot-long downstream concrete chute with concrete sidewalls; (7) a 1,200-foot-long, unlined, rock channel that carries spill downstream to the Bear River; (8) a 22-

foot-high, concrete, power intake tower with openings on three sides protected by steel trashracks; (9) a 25-foot-4-inch-high, concrete, intake tower with openings on three sides, each of which is protected by steel trashracks that receives water for the outlet works; (10) a 760-foot-long, 8-foot-diameter concrete tunnel through the left abutment of the main dam that conveys water from the power intake to the powerhouse; (11) a steel-reinforced, concrete powerhouse with a 6.8-megawatt, vertical-shaft, Francis-type turbine, which discharges to the Bear River at the base of the main dam; (12) a 350-foot-long, 48-inch-diameter steel pipe that conveys water from the intake structure to a valve chamber for the outlet works; (13) a 400-foot-long, 7.5-foot-diameter concrete-lined horseshoe tunnel that connects to the valve chamber; (14) a 48-inch-diameter, outlet valve with a capacity of 500 cubic feet per second that discharges directly into the Bear River; (15) a fenced switchyard adjacent to the powerhouse; (16) two recreation areas with campgrounds, day-use areas, boat ramps, restrooms, and sewage holding ponds; and (17) a water system that includes two pumps in the reservoir delivering water to a treatment facility that is piped to a 60,000-gallon storage tank to supply water to recreation facilities. The project has no transmission facilities. The estimated average annual generation (1976 to 2014) is 20,381 megawatt-hours.

South Sutter Water District proposes to: (1) raise the normal maximum water surface elevation (NMWSE) of the project reservoir by approximately 5 feet from an elevation of 300 feet to an elevation of 304.8 feet; (2) raise the crest of the existing spillway from an elevation of 300 feet to an elevation of 304.8 feet to accommodate the proposed pool raise; (3) construct an ogee-type weir secondary spillway structure at an elevation of 304.8 feet; (4) excavate a new unlined spillway inlet channel to divert water from the reservoir into the new secondary spillway; (5) construct a new 805-foot-long unlined outlet channel to convey water back from the secondary spillway to the existing spillway; (6) construct a 300-foot-long bridge to provide access to the secondary spillway and allow vehicles to pass over the dam and along Blackford Road; (7) modify the existing Blackford Road by raising the west end 15 feet to accommodate the approach to the new bridge; (8) relocate, reroute, or realign approximately 104 recreation facilities and replacement or rehabilitation of recreation facilities to maintain their proper functioning

condition; (9) add an existing 0.25-mile road as a primary project road to access the powerhouse and switchyard; and (10) modify the project boundary to account for: the removal of the 1.9-mile-long transmission line from the license in 1991; corrections based on current project operation and maintenance; and changes to the project boundary to account for the new reservoir surface level.

m. A copy of the application can be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or call toll-free, (866) 208-3676 or (202) 502-8659 (TTY).

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

You may also register online at <https://ferconline.ferc.gov/FERCOnline.aspx> to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

n. The applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Date
Deadline for Filing Comments, Recommendations, and Agency Terms and Conditions/Prescriptions.	November 4, 2024.
Licensee's Reply to REA Comments.	December 19, 2024.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Dated: September 5, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-20592 Filed 9-10-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24-80-000]

Mississippi Hub, LLC; Notice of Revised Schedule for Environmental Review of the MS Hub Capacity Expansion Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental assessment (EA) for Mississippi Hub, LLC's MS Hub Capacity Expansion Project. The first notice of schedule, issued on May 17, 2024, identified August 16, 2024, as the EA issuance date. However, additional time was required for Mississippi Hub, LLC to file complete responses to staff's environmental information requests, and for staff to review those responses. As a result, staff has revised the schedule for issuance of the EA.

Schedule for Environmental Review

Issuance of the EA: October 30, 2024

90-day Federal Authorization Decision
Deadline: ¹ January 28, 2025

If a schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC website (www.ferc.gov). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (i.e., CP24-80), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

¹ The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Dated: September 5, 2024.
Debbie-Anne A. Reese,
Acting Secretary.
[FR Doc. 2024-20588 Filed 9-10-24; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24-93-000.
Applicants: KeySpan Gas East Corporation.
Description: § 284.123 Rate Filing: Revised Statement of Operating Conditions to be effective 11/1/2024.
Filed Date: 9/4/24.
Accession Number: 20240904-5189.
Comment Date: 5 p.m. ET 9/25/24.
Docket Numbers: PR24-94-000.
Applicants: The Brooklyn Union Gas Company.

Description: § 284.123 Rate Filing: Revised Statement of Operating Conditions to be effective 11/1/2024.
Filed Date: 9/5/24.
Accession Number: 20240905-5000.
Comment Date: 5 p.m. ET 9/26/24.
Docket Numbers: RP24-1050-000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 9-1-24 to be effective 9/1/2024.
Filed Date: 9/4/24.
Accession Number: 20240904-5107.
Comment Date: 5 p.m. ET 9/16/24.
Docket Numbers: RP24-1051-000.
Applicants: Midwestern Gas Transmission Company.

Description: § 4(d) Rate Filing: Revisions to Sections 8.6 & 8.25 to be effective 10/11/2024.
Filed Date: 9/5/24.
Accession Number: 20240905-5033.
Comment Date: 5 p.m. ET 9/17/24.
Docket Numbers: RP24-1052-000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: DPEs—Piedmont (Tidewater and Spray) to be effective 10/6/2024.
Filed Date: 9/5/24.

Accession Number: 20240905-5072.
Comment Date: 5 p.m. ET 9/17/24.
Docket Numbers: RP24-1053-000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Update

(EcoEnergy_Sempra 2024) to be effective 9/5/2024.

Filed Date: 9/5/24.
Accession Number: 20240905-5099.
Comment Date: 5 p.m. ET 9/17/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24-994-001.
Applicants: Midcontinent Express Pipeline LLC.
Description: Tariff Amendment: Amendment RP24-994 Negotiated Rate Agreement to be effective 9/1/2024.
Filed Date: 8/29/24.
Accession Number: 20240829-5248.
Comment Date: 5 p.m. ET 9/9/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or *OPP@ferc.gov*.

Dated: September 5, 2024.
Debbie-Anne A. Reese,
Acting Secretary.
[FR Doc. 2024-20587 Filed 9-10-24; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 4639–033]****Ampersand Christine Falls Hydro, LLC; Notice of Revised Procedural Schedule for Environmental Assessment for the Proposed Project Relicense**

On September 29, 2021, Ampersand Christine Falls Hydro, LLC filed an application for a subsequent minor license for the 850-kilowatt Christine Falls Hydroelectric Project (Christine Falls Project or project; FERC No. 4639). On November 9, 2023, Commission staff issued a notice of intent to prepare an environmental assessment (EA) to evaluate the effects of relicensing the project. The notice of intent included an anticipated schedule for issuing the EA.

By this notice, Commission staff is updating the procedural schedule for completing the EA. The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue EA	October 2024.

Any questions regarding this notice may be directed to Andy Bernick at (202) 502–8660 or andrew.bernick@ferc.gov.

Dated: September 5, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–20593 Filed 9–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. CP24–515–000]****Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline**

Take notice that on August 29, 2024, Columbia Gas Transmission, LLC (Columbia Gas), 700 Louisiana Street, Suite 1300, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.208(f)(2) of the Commission's regulations under the Natural Gas Act (NGA), and Columbia Gas' blanket certificate issued in Docket No. CP83–76–000, for authorization to increase the maximum allowable operating pressure (MAOP) of its L–722

transmission pipeline from 100 pounds per square inch gauge (psig) to 125 psig located in Lorain County, Ohio (Line L–722 MAOP Increase Project). The proposed MAOP increase will increase the design capacity of L–722 from 3,450 dekatherms per day (Dth/d) to 4,500 Dth/d. Columbia Gas states that the project will allow it to maintain reliability and meet customer demands and peak day demand commitments to Columbia Gas' customers, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, at (832) 320–54–77 or by email to David_alonzo@tcenergy.com.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on November 4, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in

Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is November 4, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is November 4, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before November 4, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–515–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or ⁶

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–515–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: David A. Alonzo, Manager of Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, or by email (with a link to the document) to David_alonzo@tcenergy.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to www.ferc.gov/docs-filing/esubscription.asp.

Dated: September 5, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–20589 Filed 9–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2514–209]

Appalachian Power Company; Notice of Revised Procedural Schedule for Environmental Assessment for the Proposed Project Relicense

On February 28, 2022, as supplemented,¹ Appalachian Power Company (Appalachian) filed an application for a new license to continue to operate and maintain the 26.1-megawatt Byllesby-Buck Hydroelectric Project No. 2514 (project). On December 22, 2023, Commission staff issued a notice of intent to prepare an environmental assessment (EA) to evaluate the effects of relicensing the project. The notice included an anticipated schedule for issuing the EA.

By this notice, Commission staff is updating the procedural schedule for completing the EA. The revised schedule is shown below. Further revisions to the schedule may be made as appropriate.

Milestone	Target date
Issue EA	December 2024.

Any questions regarding this notice may be directed to Jody Callihan at (202) 502–8278, or by email at jody.callihan@ferc.gov.

Dated: September 5, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024–20591 Filed 9–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD24–12–000]

Energy Efficiency Resource Participation in RTO/ISO Markets; Notice of Request for Technical Conference

Take notice that on August 29, 2024, a Coalition of nine organizations, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2023), filed a petition requesting that the Commission hold a technical conference to explore the future role, participation,

¹ The final license application filed February 28, 2022 was supplemented on February 28, 2023.

and eligibility of energy efficiency in FERC-jurisdictional wholesale markets. Comments on this filing are due by October 7, 2024.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link. There is an "eSubscription" link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: September 5, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-20585 Filed 9-10-24; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24-117-000.
Applicants: Westlands Transmission, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Westlands Transmission, LLC.

Filed Date: 9/3/24.

Accession Number: 20240903-5251.

Comment Date: 5 p.m. ET 9/24/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24-272-000.
Applicants: Westlands Transmission Project Owner, LLC.

Description: Westlands Transmission Project Owner, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/5/24.

Accession Number: 20240905-5114.

Comment Date: 5 p.m. ET 9/26/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24-2974-000.
Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL & FMPA SA No. 350, Rice Creek Generator Imbalance Service to be effective 8/7/2024.

Filed Date: 9/5/24.

Accession Number: 20240905-5036.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24-2975-000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024-09-05 SA 3435 Entergy Mississippi-Wildwood Solar 3rd Rev GIA (J908) to be effective 8/28/2024.

Filed Date: 9/5/24.

Accession Number: 20240905-5051.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24-2976-000.
Applicants: Puget Sound Energy, Inc.

Description: § 205(d) Rate Filing: Air Products Manufacturing Corporation—NITSA, NOA, IA to be effective 9/1/2024.

Filed Date: 9/5/24.

Accession Number: 20240905-5066.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24-2977-000.
Applicants: American Transmission Company LLC, Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: American Transmission Company LLC submits tariff filing per 35.13(a)(2)(iii): 2024-09-05 SA 4347 ATC-WPL PCA (Project Wave) to be effective 11/5/2024.

Filed Date: 9/5/24.

Accession Number: 20240905-5085.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24-2978-000.
Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024-09-05 MISO-AECI Amended Balancing Authority Coordination Agreement to be effective 11/5/2024.

Filed Date: 9/5/24.

Accession Number: 20240905-5094.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24-2979-000.
Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2024-09-05 CRR Exchange Agreement—First Amendment—TANC to be effective 1/1/2025.

Filed Date: 9/5/24.

Accession Number: 20240905-5111.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24-2980-000.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation of ISA, SA No. 1767; Queue No. AB2-102 to be effective 9/30/2024.

Filed Date: 9/5/24.

Accession Number: 20240905-5120.

Comment Date: 5 p.m. ET 9/26/24.

Docket Numbers: ER24-2981-000.
Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Notice of Cancellation—WMPA Service Agreement No. 5700; Queue No. AF1-001 to be effective 11/5/2024.

Filed Date: 9/5/24.

Accession Number: 20240905-5145.

Comment Date: 5 p.m. ET 9/26/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: September 5, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

[FR Doc. 2024-20586 Filed 9-10-24; 8:45 am]

BILLING CODE 6717-01-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Extension Without Change of an Existing Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it is submitting to the Office of Management and Budget (OMB) a request for a three-year extension without change of the existing recordkeeping requirements under its regulations.

DATES: Written comments on this notice must be submitted on or before October 11, 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 Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, at (202) 921–3240 or kathleen.oram@eoc.gov. Requests for this notice in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL Video Phone).

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission enforces title VII of the Civil Rights Act of 1964 (title VII), title I of the Americans with Disabilities Act (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which collectively prohibit discrimination on the basis of race, color, religion, sex, national origin, disability, or genetic information. Section 709(c) of title VII, section 107(a) of the ADA, and section 207(a) of GINA authorize the EEOC to issue recordkeeping and reporting regulations that are deemed reasonable, necessary, or appropriate.¹ The EEOC has promulgated recordkeeping regulations under these authorities that are contained in 29 CFR part 1602. These regulations do not require the creation of any particular records but generally require employers and labor organizations to preserve any personnel and employment records they make or

keep for a period of one year or two years, and possibly longer if a charge of discrimination is filed. The EEOC seeks an extension without change of OMB’s clearance under the PRA of the recordkeeping requirements in 29 CFR part 1602.

A notice that the EEOC would be submitting this request was published in the **Federal Register** on July 3, 2024, allowing for a 60-day public comment period. One comment was received from the public during the comment period; however, the comment did not address the EEOC’s recordkeeping requirements. Accordingly, no changes have been made to the requirements based upon the comment.

Overview of Current Information Collection

Collection Title: Recordkeeping Under Title VII, the ADA, and GINA.

OMB Number: 3046–0040.

Description of Affected Public:

Employers and labor organizations subject to Title VII.

Number of Respondents: 887,869.

Number of Reports Submitted: 0.

Estimated Burden Hours: 178,485.

Burden Hour Cost: \$5,806,101.

Federal Cost: None.

Number of Forms: None.

Abstract: Section 709(c) of title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), section 107(a) of the ADA, 42 U.S.C. 12117(a), and section 207(a) of GINA, 42 U.S.C. 2000ff–6(a), direct the Commission to establish regulations pursuant to which entities subject to those Acts shall make and preserve certain records to assist the EEOC in ensuring compliance with the Acts’ prohibitions on employment discrimination. Accordingly, the EEOC issued regulations setting out recordkeeping requirements for private employers (29 CFR 1602.14); employers, labor organizations, and joint labor-management committees that control apprenticeship programs (29 CFR 1602.21(b)); labor organizations (29 CFR 1602.28(a)); state and local governments (29 CFR 1602.31); elementary and secondary school systems or districts (29 CFR 1602.40); and institutions of higher education (29 CFR 1602.49(a)). Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of section 706(b) and 709(e) of title VII, which are also incorporated by reference into the ADA at section 107(a) and GINA at section 207(a).

Burden Statement: The estimated number of respondents subject to this recordkeeping requirement is 887,869

entities, which combines estimates from private employment,² the public sector,³ colleges and universities,⁴ apprenticeship programs,⁵ and labor organizations.⁶ An entity subject to the recordkeeping requirement in 29 CFR part 1602 must retain all personnel or employment records, records relating to apprenticeship, or union membership or referral records made or kept by that entity for one year (private employers and labor organizations) or two years (public sector, colleges and universities, apprenticeship programs), and must retain any records relevant to charges of discrimination filed under Title VII, the ADA, or GINA until final disposition of those matters, which may be longer than one or two years. This recordkeeping requirement does not require reports or the creation of new records, but merely requires retention of records that an entity has already made or kept in the normal course of its business operations. Thus, existing employers and labor organizations bear no burden under this analysis because their systems for retaining these types of records are already in place.

Newly formed entities may incur a small burden when setting up their data collection and retention systems to ensure compliance with EEOC’s recordkeeping requirements. We assume some effort and time must be expended by new employers or labor organizations to familiarize themselves with the Title VII, ADA, and GINA recordkeeping

² Source of original data: 2021 Economic Census (<https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html>). Local Downloadable CSV data. Select U.S. & states, 6-digit NAICS. The original number of employers was adjusted to include only those with 15 or more employees.

³ Source of original data: 2022 Census of Governments: Employment. Individual Government Data File (<https://www.census.gov/data/datasets/2022/econ/apes/2022.html>). Local Downloadable Data zip file “Individual Unit Files.” The original number of government entities was adjusted to include only those with 15 or more employees.

⁴ Source: U.S. Department of Education, National Center for Education Statistics, IPEDS, Fall 2022, Institutional Characteristics component (provisional data). See Table 1, “Number and percentage distribution of Title IV institutions, by control of institution, level of institution, and region: United States and other U.S. jurisdictions, academic year 2022–23” (<https://nces.ed.gov/ipeds/search/viewtable?tableId=35945&returnUrl=%2Fsearch/>).

⁵ Source: U.S. Department of Labor, Registered Apprenticeship National Results Fiscal Year 2021, Number of active apprenticeship programs in 2021 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021>).

⁶ The EEOC has undertaken measures to enhance the agency’s existing EEO–3 data frame (i.e., roster) of potentially eligible filers that was most recently used during the 2022 EEO–3 data collection. The number of labor organizations was estimated by comparing the EEOC’s 2022 EEO–3 frame to a list of active unions from the U.S. Department of Labor’s Office of Labor Management Standards (OLMS) Online Public Disclosure Room (OPDR) database (<https://olmsapps.dol.gov/olpdr/>).

¹ While the Pregnant Workers Fairness Act (PWFA) also authorizes the EEOC to issue recordkeeping regulations, this notice announces the EEOC’s intent to seek an extension of the existing recordkeeping requirements under Title VII, the ADA, and GINA. Recordkeeping requirements concerning the PWFA will be addressed separately.

requirements and explain those requirements to the appropriate staff. We estimate that 30 minutes would be needed for this one-time familiarization process. Using projected business formation estimates from the U.S. Census Bureau for 2023 and the number of new apprenticeship programs established in 2021 provided by the Department of Labor, we estimate that there are 356,969 entities that would incur this start-up burden.⁷ Assuming a 30-minute burden per entity, the total annual hour burden is 178,485 hours (.5 hour × 356,969 new entities = 178,485 hours). The estimated associated burden hour cost to respondents is \$5,806,101, or around \$16.27 per new entity.⁸

For the Commission,
Charlotte A. Burrows,
Chair.

[FR Doc. 2024–20610 Filed 9–10–24; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 243491]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, the Federal Communications Commission (FCC) proposes to rescind the FCC/WCB–5, Robocall Mitigation Database, system of records. The FCC previously used information in this system to collect and maintain information provided by individual representatives of voice service providers who were certifying the service providers' implementation of the STIR/SHAKEN caller ID authentication framework and/or a robocall mitigation program.

DATES: The rescindment will become effective 30 days after publication.

ADDRESSES: Comments can be submitted to Privacy@fcc.gov.

⁷ Sources: Business Formation Statistics from the U.S. Census Bureau (<https://www.census.gov/econ/bfs/index.html>); Total projected business formation statistics (series BF_PBF4Q) for 2023, across all industries, for the US, not seasonally adjusted; U.S. Department of Labor, New Apprenticeship programs for 2021 (<https://www.dol.gov/agencies/eta/apprenticeship/about/statistics/2021>).

⁸ Burden hour cost estimates are based on the median hourly wage rate of \$32.53 for Human Resources Specialists obtained from the Bureau of Labor Statistics, May 2024 (see U.S. Department of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, <https://www.bls.gov/ooh/>).

FOR FURTHER INFORMATION CONTACT: For further information please contact Brendan McTaggart at 202–418–1738 or Privacy@fcc.gov.

SUPPLEMENTARY INFORMATION: The Privacy Act provides that an agency may collect or maintain in its records only information about individuals that is relevant and necessary to accomplish a purpose that is required by a statute or executive order. The FCC has determined that this system no longer meets this standard, because the only type of personally identifiable information currently being collected and maintained in this system is business contact information, and a more recent system of records—FCC–2, Business Contacts and Certifications—was developed to maintain this type of business contact information across the agency (*i.e.*, wholly including all of the information maintained in the Robocall Mitigation Database). Therefore, the FCC proposes to rescind FCC/WCB–5 and manage the records it contains under FCC–2 in accordance with the requirements in the SORN and the applicable records retention or disposition schedule approved by the National Archives and Records Administration.

SYSTEM NAME AND NUMBER:

FCC/WCB–5, Robocall Mitigation Database.

HISTORY:

86 FR 26916 (March 18, 2021).

Marlene Dortch,
Secretary.

[FR Doc. 2024–20573 Filed 9–10–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 19–329; FR ID 243596]

Federal Advisory Committee Act; Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Task Force for Reviewing the Connectivity and Technology Needs of Precision Agriculture in the United States (Task Force) will hold its next meeting via live internet link.

DATES: October 15, 2024. The meeting will come to order at 3:00 p.m. EDT.

ADDRESSES: The meeting will be held via conference call and open viewing to the public via live feed from the FCC's web page at www.fcc.gov/live.

FOR FURTHER INFORMATION CONTACT: Emily Caditz, Designated Federal Officer, at (202) 418–2268, or Emily.Caditz@fcc.gov; or Thomas Hastings, Deputy Designated Federal Officer, at (202) 418–1343, or Thomas.Hastings@fcc.gov.

SUPPLEMENTARY INFORMATION: The meeting will be held on October 15, 2024 at 3:00 p.m. EDT and may be viewed live, by the public, at <http://www.fcc.gov/live>. Any questions that arise during the meeting should be sent to PrecisionAgTF@fcc.gov and will be answered at a later date. Members of the public may submit comments to the Task Force in the FCC's Electronic Comment Filing System, ECFS, at www.fcc.gov/ecfs. Comments to the Task Force should be filed in GN Docket No. 19–329.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may not be possible to fill.

Proposed Agenda: At this meeting, the Task Force will hear updates from the Working Group leadership, discuss progress towards recommendations, and edit a draft Executive Summary. This agenda may be modified at the discretion of the Task Force Chair and the Designated Federal Officer.

(5 U.S.C. App 2 10(a)(2))

Federal Communications Commission.

Jodie May,

Division Chief, Competition Policy Division,
Wireline Competition Bureau.

[FR Doc. 2024–20536 Filed 9–10–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION**[OMB 3060–1260; FR ID 243134]****Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority****AGENCY:** Federal Communications Commission.**ACTION:** Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 12, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:*OMB Control Number:* 3060–1260.*Title:* Broadcast Incubator Program.*Form Number:* N/A.*Type of Review:* Extension of a currently approved collection.*Respondents:* Business or other for-profit entities; not-for-profit institutions; Tribal Governments.*Number of Respondents and Responses:* 20 respondents; 123 responses.*Estimated Time per Response:* 4 to 16 hours.*Frequency of Response:* On occasion reporting requirement; annual reporting requirement.*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority that covers this information collection is 47 U.S.C. 151, 152(a), 154(i), 257, 303, 307–310, and 403.*Total Annual Burden:* 1,179 hours.*Total Annual Cost:* \$326,700.

Needs and Uses: On August 3, 2018, the Commission released a Report and Order (Order), Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services, FCC 18–114, in MB Docket No. 17–289, establishing the requirements that will govern the incubator program that the Commission previously decided to adopt to support the entry of new and diverse voices into the radio broadcast industry. The incubator program is designed for small businesses, struggling station owners, and new entrants that do not have any other means to access the financial assistance and operational support necessary for success in the broadcast industry. The goal is the pairing of these small aspiring, or struggling, broadcast station owners with established broadcasters. These incubation relationships will provide new entrants and struggling small broadcasters access to the financing, mentoring, and industry connections that are necessary for success in the industry, but to date have been unavailable to many. In return for successfully incubating a small aspiring, or struggling, broadcast station owner as part of the Commission's incubator program, an incumbent broadcaster will be eligible to receive a waiver (a reward waiver) of the Commission's Local Radio Ownership Rule following the conclusion of a successful qualifying incubation relationship. The standard term for an incubation relationship is three years.

Commission staff will use the applications, certified statements, and contracts submitted by potential incubating and incubated entities, along with any responses to Commission requests for additional information to determine qualifications for participation in the incubator program.

Commission staff will use the periodic reports to determine whether

ongoing incubation relationships are proceeding in a manner consistent with the parties' initial filings and are likely to result in a successful incubation relationship. At the end of a successful incubation relationship, either the incubated entity will own and operate a full-service AM or FM station independently or the incubated station will be on a firmer footing if the station was struggling at the start of the relationship.

In the event the parties seek to extend the duration of their incubation relationship beyond the standard three-year term, the filing of a request for such an extension will enable Commission staff to gauge the types of problems incubating parties are experiencing. Information provided by the parties to the Commission no later than six months before the contract termination date will allow Commission staff to evaluate which option for station ownership the incubating parties plan to pursue at the conclusion of the relationship—*i.e.*, whether the incubated entity plans to keep the incubated station or purchase a new station. Additionally, Commission staff will review documentation submitted to seek a reward waiver to assess whether the market where the reward waiver is sought is comparable to the market where the incubated station was located.

Federal Communications Commission.

Marlene Dortch,*Secretary, Office of the Secretary.*

[FR Doc. 2024–20530 Filed 9–10–24; 8:45 am]

BILLING CODE 6712–01–P**FEDERAL COMMUNICATIONS COMMISSION****[FR ID 243133]****Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council****AGENCY:** Federal Communications Commission.**ACTION:** Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC) IX will hold its second meeting on September 27, 2024 at 1:00 p.m. EDT.

DATES: September 27, 2024.

ADDRESSES: The meeting will be held at 45 L Street NE, Washington, DC, and via conference call. The meeting is open to

the public and is also available via WebEx at <https://www.fcc.gov/live> and on the FCC's YouTube channel.

FOR FURTHER INFORMATION CONTACT:

Suzon Cameron, Designated Federal Officer (DFO), CSRIC IX, FCC, (202) 418-1916 or email: CSRIC@fcc.gov, Kurian Jacob, Deputy DFO, CSRIC IX, FCC, (202) 418-2040 or email: CSRIC@fcc.gov, or Logan Bennett, Deputy DFO, CSRIC IX, FCC, (202) 418-7790 or email: CSRIC@fcc.gov.

SUPPLEMENTARY INFORMATION: The meeting will be held on September 27, 2024, at 1:00 p.m. ET, in the Commission Meeting Room of the Federal Communications Commission, 45 L Street NE, Washington, DC. While the CSRIC IX meeting is open to the public, the FCC headquarters building is not open access, and all guests must check in with and be screened by FCC security at the main entrance on L Street. Attendees at the meeting will not be required to have an appointment but must otherwise comply with protocols outlined at: <https://www.fcc.gov/visit>.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the Commission to improve the security, reliability, and interoperability of communications systems. On March 26, 2024, the Commission, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC IX for a period of two years through March 25, 2026. The meeting on September 27, 2024, will be the second meeting of CSRIC IX under the current charter. The FCC will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at <https://www.fcc.gov/live> and on the FCC's YouTube channel. The public may submit written comments before the meeting to Suzon Cameron, DFO, CSRIC IX, via email to CSRIC@fcc.gov.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to fcc504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the Commission can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024-20537 Filed 9-10-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0261 and OMB 3060-0270; FR ID 243370]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before November 12, 2024. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0261.

Title: Section 90.215, Transmitter Measurements.

Form No.: Not applicable.

Frequency of Response: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal Government.

Number of Respondents: 150,081 respondents; 234,439 responses.

Estimated Time per Response: .033 hours.

Frequency of Response:

Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 303(f) of the Communications Act of 1934, as amended.

Total Annual Burden: 7,727 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements contained in Section 90.215 require station licensees to measure the carrier frequency, output power, and modulation of each transmitter authorized to operate with power in excel of two watts when the transmitter is initially installed and when any changes are made which would likely affect the modulation characteristics. Such measurements, which help ensure proper operation of transmitters, are to be made by a qualified engineering measurement service, and are required to be retained in the station records, along with the name and address of the engineering measurement service, and the name of the person making the measurements. The information is normally used by the licensee to ensure that equipment is operating within prescribed tolerances. Prior technical operation of transmitters helps limit interference to other users and provides the licensee with the maximum possible utilization of equipment.

OMB Control No.: 3060-0270.

Title: Section 90.443, Content of Station Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 166,658 respondents; 166,658 responses.

Estimated Time per Response: .25 hours.

Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 303(j), as amended.

Total Annual Burden: 61,665 hours.

Annual Cost Burden: No cost.

Needs and Uses: The information collection requirements contained under Section 90.443(b) require that each licensee of a station shall maintain records for all stations by providing the dates and pertinent details of any maintenance performed on station equipment, along with the name and address of the service technician who did the work. If all maintenance is performed by the same technician or service company, the name and address need be entered only once in the station records.

The information collection requirements under Section 90.443(c) require that at least one licensee participating in the cost arrangement must maintain cost sharing records.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary

[FR Doc. 2024-20531 Filed 9-10-24; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24-17]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council

ACTION: Notice of special closed meeting.

SUMMARY: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (title XI), notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on these dates.

Location: Virtual meeting via Teams

Date: July 10, 2024

Time: 10:45 a.m. ET

Location: Virtual meeting via Teams

Date: August 14, 2024

Time: 11:00 a.m. ET

Location: Virtual meeting via Teams

Date: September 4, 2024

Time: 11:15 a.m. ET

Action and Discussion Item

Personnel Matter

The ASC convened a Special Closed Meeting to discuss a personnel matter

pursuant to section 1104(b) of Title XI (12 U.S.C. 3333(b)). No action was taken by the ASC.

Loretta Schuster,

Management & Program Analyst.

[FR Doc. 2024-20607 Filed 9-10-24; 8:45 am]

BILLING CODE 6700-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24-16]

Appraisal Subcommittee; Notice of Meeting; Cancellation

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting; cancellation.

The ASC Meeting, which was published in accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, (12 U.S.C. 3333(b)) at 89 FR 72841, September 6, 2024 and scheduled for Wednesday, September 11, 2024 at 10:00 a.m. ET, is cancelled.

Loretta Schuster,

Management & Program Analyst.

[FR Doc. 2024-20600 Filed 9-10-24; 8:45 am]

BILLING CODE 6700-01-P

GENERAL SERVICES ADMINISTRATION

[Notice-PBS-2024-11; Docket No. 2024-0002; Sequence No. 38]

Notice of Availability for the Record of Decision on the Buildings at 202, 214 and 220 South State Street, Chicago, Illinois

AGENCY: Great Lakes Region 5, Public Buildings Service (PBS), U.S. General Services Administration (GSA).

ACTION: Notice of availability (NOA).

SUMMARY: On September 4, 2024, The U.S. General Services Administration (GSA), in cooperation with the U.S. Federal Protective Service, issued a Record of Decision (ROD) on the Final Environmental Impact Statement (EIS) for the future of three vacant federally owned buildings located at 202, 214, and 220 South State Street in downtown Chicago, Illinois. These properties are adjacent to the Dirksen U.S. Courthouse. GSA selects the Viable Adaptive Reuse Alternative, and the agency will pursue reuse under the National Historic Preservation Act (NHPA) section 111 outlease authority. The Viable Adaptive

Reuse Alternative meets the purpose and need for the Proposed Action upon satisfying the security needs of the Dirksen Courthouse. GSA will issue a Request for Lease Proposals (RLP) in Fall 2024. The ROD was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations, and the GSA Public Buildings Service NEPA Desk Guide. It documents the agency's decision based on the Final EIS; associated technical reports; comments from Federal and State agencies, stakeholders, members of the public, and elected officials; and other resources contained in the administrative record.

DATES: Applicable: September 4, 2024.

ADDRESSES: The ROD may be found online at the following website: <https://www.gsa.gov/about-us/gsa-regions/region-5-great-lakes/buildings-and-facilities/illinois/chicago-202220-s-state-st-fps>.

FOR FURTHER INFORMATION CONTACT:

Joseph Mulligan, GSA Project Manager, via

- Email: statestreet@gsa.gov

- Cell: 312-886-9593

- Mail: ATTN: Joseph Mulligan, U.S. General Services Administration, 230 S Dearborn St., Suite 3600, Chicago, IL 60604

SUPPLEMENTARY INFORMATION:

Proposed Action

The Proposed Action is to address the future of the three vacant buildings at 202, 214 and 220 South State Street, east of the Dirksen Courthouse. The purpose of the Proposed Action is to address the security needs of the Dirksen Courthouse, respond to the Congressional intent and funding authorization provided in the 2022 Consolidated Appropriations Act, and manage Federal assets.

Decision

GSA selects the Viable Adaptive Reuse Alternative.

GSA will use the NHPA Section 111 outlease authority to initiate the reuse strategy. GSA will request market-driven redevelopment proposals with the following considerations:

- First, GSA will consider and prioritize proposals that align with the viable adaptive reuse security criteria established for this proposed action and demonstrate the financial capability of the offeror to successfully execute.

- Second, GSA will consider proposals with proposed deviations from the viable adaptive reuse security criteria that demonstrate the financial

capability of the offeror to successfully execute. Any proposed deviation must be agreed to by GSA. There are no Federal funds available for reuse or proposed deviations from the security criteria.

- The RLP will allow for redevelopment of all buildings and parcels at 202 through 220 South State Street or one, two, or all three buildings.
- The RLP will require the offeror to demonstrate their expertise in historic preservation to successfully execute the reuse project as stated in the Programmatic Agreement.
- No Federal funds are available for the rehabilitation, preservation, or restoration of 202, 214, and 220 South State Street; therefore, any rehabilitation or modification of the buildings to meet the security criteria would not be performed at the Federal Government's expense.

GSA may amend this Record of Decision if no RLP responses are received or accepted by GSA.

National Historic Preservation Act

The NHPA section 106 Consultation was concurrent with the NEPA process. The Century Building (202 South State Street) and the Consumers Building (220 South State Street) are historic resources contributing to the Loop Retail Historic District, which are listed in the National Register of Historic Places (NRHP). In this Proposed Action, 214 South State Street is being treated as eligible for listing in the NRHP as a contributing resource to the Loop Retail Historic District. GSA executed the Programmatic Agreement with the Illinois State Historic Preservation Officer and Advisory Council on Historic Preservation on August 26, 2024. The Programmatic Agreement is included as Exhibit A in the ROD.

William Renner,

Director, Facilities Management and Services Programs Division, Great Lakes Region 5, U.S. General Services Administration.

[FR Doc. 2024–20439 Filed 9–10–24; 8:45 am]

BILLING CODE 6820–CF–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10326]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by October 11, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

FOR FURTHER INFORMATION CONTACT:

William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section

3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* Electronic Submission of Medicare Graduate Medical Education (GME) Affiliation Agreements; *Use:* Existing regulations at § 413.75(b) permit hospitals that share residents to elect to form a Medicare GME affiliated group if they are in the same or contiguous urban or rural areas, if they are under common ownership, or if they are jointly listed as program sponsors or major participating institutions in the same program by the accrediting agency. The purpose of a Medicare GME affiliated group is to provide flexibility to hospitals in structuring rotations under an aggregate full time equivalent (FTE) resident cap when they share residents. The existing regulations at § 413.79(f)(1) specify that each hospital in a Medicare GME affiliated group must submit a Medicare GME affiliation agreement (as defined under § 413.75(b)) to the Medicare Administrative Contractor (MAC) servicing the hospital and send a copy to the Centers for Medicare and Medicaid Services' (CMS) Central Office, no later than July 1 of the residency program year during which the Medicare GME affiliation agreement will be in effect. CMS will use the information contained in electronic affiliation agreements as documentation of the existence of Medicare GME affiliations, and to verify that the affiliations being formed by teaching hospitals for the purposes of sharing their Medicare GME FTE cap slots are valid according to CMS regulations. CMS will also use these affiliation agreements as reference materials when potential issues involving specific affiliations arise. While we have used hard copies of affiliation agreements for those same purposes in the past, we implemented this electronic submission process in order to expedite and ease the process of retrieving, analyzing and evaluating affiliation agreements. *Form Number:* CMS–10326 (OMB control number: 0938–1111); *Frequency:* Annually; *Affected Public:* Private

Sector, Business or other for profits, Not for profit institutions; *Number of Respondents:* 125; *Total Annual Responses:* 125; *Total Annual Hours:* 166. (For policy questions regarding this collection contact Shevi Marciano at 410-786-2874.)

William N. Parham, III
Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.
[FR Doc. 2024-20527 Filed 9-10-24; 8:45 am]
BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget Review; Children’s Bureau Regional Partnership Grants Final Report Outline (NEW)

AGENCY: Children’s Bureau, Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.
ACTION: Request for public comments.

SUMMARY: The Children’s Bureau (CB) is requesting a new collection effort for the Regional Partnership Grant (RPG) program, for the use of a Regional Partnership Grants Final Report Outline to collect cumulative project information. Information from the report will aid grant recipients in meeting grant management requirements as well as to support CB in gathering information on the projects to better

monitor the project’s use of funds, implementation successes and challenges and program and service effectiveness.

DATES: *Comments due October 11, 2024.* The Office of Management and Budget (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: Information from the proposed collection will aid grant recipients in meeting grant management requirements as well as support CB in gathering information on the projects to monitor the project’s use of funds, implementation successes and challenges, and program and service effectiveness. The Regional Partnership Grants Final Report Outline will provide a clear and consistent way for CB to gather information on the projects to better monitor the project’s use of

funds, implementation successes and challenges and program and service effectiveness.

The Regional Partnership Grants program is in its 7th Round of funding, providing a consistent clear template for the project’s final reports will assist CB to ensure appropriate program monitoring and to build the evidence of effective programing and practice for RPG sites and other CB efforts to support families impacted by substance use.

Respondents: Regional Partnership Grants recipients. There are currently two active cohorts (Round 6 and Round 7) of RPG recipients. There are 8 grant recipients in Round 6 and 18 grant recipients in Round 7. Regional Partnership Grants recipients, include state agencies, a judicial court state agency, and community-based organizations (mental health and health care community service providers).

Total Burden Estimates

The Round 6 cohort will complete projects by September 2024, with a Final Report due in fiscal year (FY)25. The Round 7 cohort will continue work through September 2027, with a Final Report due in FY28. There are 8 grant recipients in Round 6 and 18 grant recipients in Round 7. This request includes burden estimates for both cohorts. If needed, the Administration for Children and Families will request an extension to allow for FY28 reporting in 2027. Estimated burden for Round 6 grant recipients is 480 hours in FY 2025. Estimated burden for Round 7 grant recipients is 1080 hours in FY 2028.

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours
Regional Partnership Grants Final Report Outline	RPG Round 6 (FY25 Reporting) ...	1	60	480
	RPG Round 7 (FY28 Reporting) ...	1	60	1,080
Estimated total burden for both cohorts (FY25–FY28):		.....	.....	1,560

Authority: Title IV, part B, subpart 2-Promoting Safe and Stable Families, Section 437(f) of the Social Security Act (42 U.S.C. 629g(f)).

Mary C. Jones,
ACF/OPRE Certifying Officer.
[FR Doc. 2024-20425 Filed 9-10-24; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-E-0218]

Determination of Regulatory Review Period for Purposes of Patent Extension; VOQUEZNA TRIPLE PAK—New Drug Application 215152

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VOQUEZNA TRIPLE PAK—new drug application (NDA) 215152 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 12, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 10, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA-2024-E-0218 for “Determination of Regulatory Review Period for Purposes of Patent Extension; VOQUEZNA TRIPLE PAK—NDA 215152.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VOQUEZNA TRIPLE PAK—NDA 215152 (vonoprazan tablets/amoxicillin capsules/clarithromycin tablets) indicated for the treatment of *Helicobacter pylori* infection in adults. Subsequent to this approval, the USPTO received a patent term restoration application for VOQUEZNA TRIPLE PAK—NDA 215152 (U.S. Patent No. 7,977,488) from Phathom Pharmaceuticals, Inc. and the USPTO requested FDA’s assistance in determining the patent’s eligibility for patent term restoration. In a letter dated January 24, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review

period and that the approval of VOQUEZNA TRIPLE PAK—NDA 215152 represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VOQUEZNA TRIPLE PAK—NDA 215152 is 971 days. Of this time, 727 days occurred during the testing phase of the regulatory review period, while 244 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 8, 2019. The applicant claims September 23, 2019, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 8, 2019, which was 30 days after FDA receipt of an earlier IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 3, 2021. FDA has verified the applicant's claim that the NDA for VOQUEZNA TRIPLE PAK—NDA 215152 was initially submitted on September 3, 2021.

3. *The date the application was approved:* May 3, 2022 4:37 p.m. FDA has verified the applicant's claim that NDA 215152 was approved on May 3, 2022 4:37 p.m.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 599 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be

filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20552 Filed 9–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–E–0218]

Determination of Regulatory Review Period for Purposes of Patent Extension; VOQUEZNA DUAL PAK—New Drug Application 215153

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VOQUEZNA DUAL PAK—new drug application (NDA) 215153 and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by November 12, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 10, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2024–E–0218 for “Determination of Regulatory Review Period for Purposes of Patent Extension; VOQUEZNA DUAL PAK—New Drug Application 215153.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for

those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670)

generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA’s determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VOQUEZNA DUAL PAK (vonoprazan fumarate tablets/amoxicillin capsules) indicated for treatment of *Helicobacter pylori* infection in adults. Subsequent to this approval, the USPTO received a patent term restoration application for VOQUEZNA DUAL PAK (U.S. Patent No. 7,977,488) from Phathom Pharmaceuticals, Inc., and the USPTO requested FDA’s assistance in determining the patent’s eligibility for patent term restoration. In a letter dated January 24, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VOQUEZNA DUAL PAK—NDA 215153 represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product’s regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VOQUEZNA DUAL PAK (NDA 215153) is 971 days. Of this time, 727 days occurred during the testing phase of the regulatory review period, while 244

days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* September 8, 2019. The applicant claims September 23, 2019, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 8, 2019, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act or section:* September 3, 2021. FDA has verified the applicant’s claim that the new drug application (NDA) for VOQUEZNA DUAL PAK—NDA 215153 (NDA 215153) was initially submitted on September 3, 2021.

3. *The date the application was approved:* May 3, 2022 4:37 p.m. FDA has verified the applicant’s claim that NDA 215153 was approved on May 3, 2022 4:37 p.m.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 599 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305),

Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024-20551 Filed 9-10-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2024-E-0219]

Determination of Regulatory Review Period for Purposes of Patent Extension; TECHNEGAS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TECHNEGAS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by November 12, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 10, 2025. See "Petitions" in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

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- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2024-E-0219 for "Determination of Regulatory Review Period for Purposes of Patent Extension; TECHNEGAS." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The

Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301-796-3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical

investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product TECHNEGAS (technetium Tc 99m-labeled carbon). TECHNEGAS is indicated for use in adults and pediatric patients aged 6 years and older for visualization of pulmonary ventilation and evaluation of pulmonary embolism when paired with perfusion imaging. Subsequent to this approval, the USPTO received a patent term restoration application for TECHNEGAS (U.S. Patent No. 7,722,856) from Cyclomedica Australia Pty Limited and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated February 7, 2024, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of TECHNEGAS represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TECHNEGAS is 4,322 days. Of this time, 3,039 days occurred during the testing phase of the regulatory review period, while 1,283 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 1, 2011. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 1, 2011.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* March 26, 2020. FDA

has verified the applicant's claim that the new drug application (NDA) for TECHNEGAS (NDA 22335) was initially submitted on March 26, 2020.

3. *The date the application was approved:* September 29, 2023. FDA has verified the applicant's claim that NDA 22335 was approved on September 29, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20555 Filed 9–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher; OPZELURA (ruxolitinib)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that OPZELURA (ruxolitinib), approved September 21, 2021, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT:

Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: Cathryn.Lee@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that OPZELURA (ruxolitinib) meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseases/Conditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about OPZELURA (ruxolitinib), go to the “Drugs@FDA” website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: September 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20556 Filed 9–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–1527]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZTALMY

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ZTALMY and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by November 12, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 10, 2025. See “Petitions” in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 12, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically,

including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2023–E–1527 for “Determination of Regulatory Review Period for Purposes of Patent Extension; ZTALMY.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the

claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6200, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product’s regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an

application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, ZTALMY (ganaxolone) indicated for treatment of seizures associated with cyclin-dependent kinase-like 5 deficiency disorder in patients 2 years of age and older. Subsequent to this approval, the USPTO received a patent term restoration application for ZTALMY (U.S. Patent No. 8,318,714) from Marinus Pharmaceuticals, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of ZTALMY represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZTALMY is 10,382 days. Of this time, 10,065 days occurred during the testing phase of the regulatory review period, while 317 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 30, 1993. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 30, 1993.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* July 20, 2021. FDA has

verified the applicant's claim that the new drug application (NDA) for ZTALMY (NDA 215904) was initially submitted on July 20, 2021.

3. *The date the application was approved or the effective date of approval for a drug product recommended for control under the Controlled Substances Act (21 U.S.C. 811):* June 1, 2022. FDA has verified the applicant's claim that NDA 215904 was approved on March 18, 2022, and that the Drug Enforcement Agency issued an interim final rule controlling the product under section 201(j) of the Controlled Substances Act on June 1, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to <https://www.regulations.gov> at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: September 6, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–20549 Filed 9–10–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Funding Extension for Rural Behavioral Health Workforce Centers—Northern Border Region

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental funding.

SUMMARY: HRSA will provide a performance period extension with supplemental funds to three fiscal year (FY) 21 award recipients with a period of performance ending on August 31, 2025. The supplemental funding will extend their current period of performance by 12 months to align with the FY 2022 award to an additional recipient, which has a period of performance from September 1, 2022, to August 31, 2025.

FOR FURTHER INFORMATION CONTACT: Jillian Causey, Division Deputy Director, Federal Office of Rural Health Policy, Health Resources and Services Administration, at jcausey@hrsa.gov and 301–443–1493.

SUPPLEMENTARY INFORMATION:

Intended Recipient(s) of the Award: Three FY 2021 award recipients: Mary Hitchcock Memorial Hospital—New Hampshire, Medical Care Development, Inc.—Maine, Vermont Association For Mental Health, Inc.—Vermont.

Amount of Non-Competitive Award: Three awards for \$1,000,000 each.

Period of Performance: September 1, 2021, to August 31, 2025.

Assistance Listing (CFDA) Number: 93.912.

Award Instrument: Cooperative Agreement.

Authority: Section 711(b)(5) of the Social Security Act (42 U.S.C. 912(b)(5)).

TABLE 1—RECIPIENTS AND AWARD AMOUNTS

Grant No.	Award recipient name	State	Award amount
U2SRH43521	Mary Hitchcock Memorial Hospital	NH	\$1,000,000
U2SRH43522	Medical Care Development, Inc	ME	1,000,000
U2SRH43523	Vermont Association for Mental Health Inc	VT	1,000,000

Justification: The Northern Border Regional Commission (NBRC) is a federal/state partnership for economic and community development in northern Maine, New Hampshire, Vermont, and New York. NBRC was established by Congress in 2008 to help fund promising economic and community development projects. The states of Maine, New Hampshire, Vermont, and New York play a crucial role in the NBRC region.¹ In FY 2021, HRSA competitively funded three organizations in the NBRC states of Maine, New Hampshire, and Vermont for a period of performance of 3 years. In FY 2022, HRSA competitively funded another organization in the NBRC state of New York for a 3-year period of performance. HRSA is providing a 1-year extension of funding for the FY 2021 awards to align with the FY 2022 award. This would align all awards with a period of performance end date of August 31, 2025.

HRSA is implementing this extension to continue the work of the three recipients because of their benefit to the NBRC region. During their project period, they have increased access to behavioral health and substance use disorder services and strengthened the behavioral health workforce in the NBRC region to improve the health outcomes of NBRC residents.

With program funding, recipients have provided scholarships to mental health rehabilitation technicians to work in rural communities and supported intern work, providing critically needed direct services to the region's neediest, rural residents. Recipients have also funded supervision for several behavioral health clinician positions that serve rural counties, bringing in social workers and postdoctoral psychologist fellows who were able to provide care where there previously had been none. Recipients also have increased access by

connecting community members to important resources in their states, including how to find or become a peer recovery coach.

Recipients have also worked to strengthen the behavioral health workforce through training programs such as Project Extension for Community Healthcare Outcomes (Project ECHO, including Medications for Opioid Use Disorder Project ECHO and created the "Recovery Jobs for Beginners" program for individuals seeking to work as Peer Recovery Specialists. This program has provided rural communities in the NBRC region with peer recovery specialists where there often are few or none and increased provider skillsets and knowledge. In addition, recipients launched the Mental Health Peer Specialist Certification program within local community colleges in January 2024.

HRSA is implementing project period alignment of the three FY 2021 awards with the FY 2022 award recipient to allow for a seamless continuation of activities and trainings in the region to continue while also allowing all four organizations to identify sustainability strategies over the next fiscal year.

Carole Johnson,
Administrator.
[FR Doc. 2024–20584 Filed 9–10–24; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Supplemental Award; Autism Longitudinal Data Project

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice of supplemental award.

SUMMARY: HRSA is announcing supplemental award funds through the Patient-Centered Outcomes Research Trust Fund to the current HRSA award recipient to expand activities under the Autism Longitudinal Data Project (ALDP). The funding will be used to create and share a combined de-identified dataset from the Boston Birth Cohort (BBC), Massachusetts Pregnancy to Early Life Longitudinal Data System, and Agency for Healthcare Research and Quality Social Determinants of Health database.

FOR FURTHER INFORMATION CONTACT: Jessica DiBari, Senior Health Scientist, Division of Research, Office of Epidemiology and Research, Maternal and Child Health Bureau, HRSA, at JDiBari@hrsa.gov or 301–443–2170.

SUPPLEMENTARY INFORMATION:

(Intended Recipient) of the Award: Johns Hopkins University.

Project Period: The cooperative agreement is currently in year 2 of a 5-year grant cycle. Johns Hopkins University will track the supplemental award from the Patient-Centered Outcomes Research Trust Fund separately from the UT7MC45949 award.

Amount of Award: One award for \$457,833.

Assistance Listing (CFDA) Number: 93.877.

Award Instrument: Non-competitive single-source supplement.

Authority: 26 U.S.C. 9511(d)(2)(C).

TABLE 1—AWARD RECIPIENT AND AWARD AMOUNT

Grant No.	Award recipient name	State	Award amount
UT7MC45949	Johns Hopkins University	MD	\$457,833

Justification: In fiscal year 2024, the Office of the Secretary's Patient-Centered Outcomes Research Trust Fund, administered by the Office of the Assistant Secretary for Planning and Evaluation, will support a supplement to the HRSA-funded ALDP to create a longitudinal dataset for conducting

patient-centered maternal and infant health research by linking multiple databases. Through this supplement, ALDP will develop a dataset on maternal and infant biological, socio-economic, behavioral risk and protective factors, and health services indicators. The ALDP current recipient

is uniquely qualified to conduct this work because it has:

- A long-standing record of successfully completing government-funded projects.
- Led and managed the BBC since its inception in 1998.

¹ <https://www.nbrc.gov/content/northern-border-region>.

- Deep experience in the complexities of data sharing across institutions and the technical aspects of linking data.

- Access to and adherence to protections for restricted datasets.

Carole Johnson,
Administrator.

[FR Doc. 2024–20570 Filed 9–10–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group: Arthritis and Musculoskeletal and Skin Diseases Special Grants Study Section.

Date: October 17–18, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Scientific Review Officer; Scientific Review Branch, Extramural Program, Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Room 820, Bethesda, MD 30892, 301–827–7835, yasuko.furumoto@nih.gov.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group: Arthritis and Musculoskeletal and Skin Diseases Clinical Trials Study Section.

Date: October 24–25, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sushmita Purkayastha, Ph.D., Scientific Review Officer, Scientific Review Branch, Extramural Program, Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Room 814, Bethesda, MD 20817, 301–201–7600, sushmita.purkayastha@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 5, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20500 Filed 9–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who would like to attend the meeting in person as an observer must email the contact person below 5 days in advance of the meeting with their affiliation if applicable.

Those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (<https://videocast.nih.gov/watch=55153>).

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 Advisory Eye Council.

Date: October 11, 2024.

Open: 8:30 a.m. to 2:30 p.m.

Agenda: Presentation of the NEI Director's report, discussion of NEI programs, and concept clearances.

Place: National Eye Institute, 1st Floor, Room A/B/C 6700B, Rockledge Drive, Bethesda, MD 20892 (In Person).

Closed: 2:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Eye Institute, 1st Floor, Room A/B/C, 6700B Rockledge Drive, Bethesda, MD 20892 (In Person).

Contact Person: Kathleen C. Anderson, Ph.D., Director, 6700B Rockledge Drive, Room 3440, Bethesda, MD 20892, (301) 827–4320, kanders1@nei.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. In the interest of security, NIH has procedures at <https://www.nih.gov/about-nih/visitor-information/campus-access-security> for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <https://www.nei.nih.gov/about/advisory-committees/national-advisory-eye-council-naec>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 5, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–20433 Filed 9–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA

Reports Clearance Officer at (240) 276–0166.

Proposed Project: Government Performance and Results Act (GPRA) Client/Participant Outcomes Measure—(OMB No. 0930–0208)—Revision

SAMHSA is requesting approval for a revision of the CSAT Client-level GPRA instrument to collect performance and program monitoring data of its substance use services grant programs. Currently, the information collected from this instrument is entered and stored in SAMSHA's Performance Accountability and Reporting System, which is a real-time, performance management system that captures information on the substance abuse treatment and mental health services delivered in the United States. Continued approval of this information collection will allow SAMHSA to continue to meet Government

Performance and Results Modernization Act of 2010 reporting requirements that quantify the effects and accomplishments of its discretionary grant programs, which are consistent with OMB guidance.

SAMHSA will use the data for annual reporting required by GPRA and comparing baseline with follow-up and discharge data. The additional information collected through this process will allow SAMHSA to: (1) report results of these performance outcomes; (2) maintain consistency with SAMHSA-specific performance domains, and (3) assess the accountability and performance of its discretionary grant programs including a focus on health equity.

Currently, there are 379,037 total burden hours in the OMB-approved CSAT Client-level GPRA instrument. SAMHSA is now requesting an increase to 631,682 burden hours. The increase

of 252,645 burden hours is due to the following:

- Additional time allocated for interviews, but also improved estimates of the number of clients who would likely consent to complete the interview; and
- Additional time allocated for administrative collection of data by grantees, including the information that is collected for all clients regardless of whether they completed the client-portion of the interview or not.

The estimated time to complete the baseline, follow-up, and discharge interviews is 45 (0.75) minutes each. This includes the completion of the administrative sections of the tool for all clients including those who decline an interview. The estimated time to complete the SBIRT program-specific measures was increased from 12 (0.2) minutes to 15 minutes (0.25).

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

SAMHSA tool	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours	Hourly wage ^[1]	Total hour cost
Baseline Interview Includes SBIRT Brief TX, Referral to TX, and Program-specific questions	337,857	1	337,857	0.75	253,393	\$28.89	\$7,320,523
Follow-Up Interview with Program-specific questions ^[2]	270,286	1	270,286	0.75	202,715	28.89	5,856,436
Discharge Interview with Program-specific questions ^[3]	175,686	1	175,686	0.75	131,765	28.89	3,806,431
SBIRT Program—Screening Only	150,296	1	150,296	0.17	25,550	28.89	738,140
SBIRT Program—Brief Intervention Only Baseline	31,481	1	31,481	0.25	7,870	28.89	227,364
SBIRT Program—Brief Intervention Only Follow-Up ²	25,184	1	25,184	0.25	6,296	28.89	181,891
SBIRT Program—Brief Intervention Only Discharge ³	16,370	1	16,370	0.25	4,093	28.89	118,247
CSAT Total	1,007,160		1,007,160		631,682		18,249,032

^[1] The hourly wage estimate is \$28.89 based on the Occupational Employment and Wages, Mean Hourly Wage Rate for 21–1011 Substance Abuse and Behavioral Disorder Counselors = \$28.89/hr. as of May 11, 2023. (<http://www.bls.gov/oes/current/oes211011.htm>. Accessed on June 20, 2024.)

^[2] It is estimated that 80% of baseline clients will complete this interview.

^[3] It is estimated that 52% of baseline clients will complete this interview. Substance Abuse and Mental Health Services Administration (SAMHSA): Treating Concurrent Substance Use Among Adults. SAMHSA Publication No. PEP21–06–02–002. Rockville, MD: National Mental Health and Substance Use Policy Laboratory. Substance Abuse and Mental Health Services Administration, 2021.

Note: Numbers may not add to the totals due to rounding and some individual participants completing more than one form.

Send comments to SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E45, Rockville, Maryland 20857, OR email a copy to samhsapra@samhsa.hhs.gov. Written comments should be received by November 12, 2024.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2024–20434 Filed 9–10–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are 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) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Project: Zero Suicide in Health Systems Evaluation—New Package

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting clearance for the new data collection associated with the Evaluation of the SAMHSA Zero

Suicide in Health Systems (Zero Suicide Evaluation). Per the Public Health Services Act (42 U.S.C. 290bb–43), SAMHSA is required to evaluate the Zero Suicide grant, specifically (1) “evaluate the activities supported by grants awarded, disseminate, as appropriate, the findings from the evaluation; and (2) provide appropriate information, training, and technical assistance, as appropriate, to eligible entities that receive a grant under this section, in order to help such entities to meet the requirements of this section, including assistance with selection and implementation of evidence.”

The goal of the Zero Suicide program is reduction of suicide and suicide attempts across America, focusing on individuals who are 25 years and older. The purpose of this program is to implement the Zero Suicide intervention and prevention model for adults throughout a health system or systems. The Zero Suicide model is a comprehensive, multi-setting approach to suicide prevention in health. To accomplish this critical, lifesaving work, it is essential that the effectiveness of these programs be evaluated on an ongoing basis, with implementation of suicide prevention programs continually informed by high-quality evaluation results. SAMHSA will use this data to reduce suicide ideation, suicide attempts, and deaths due to suicide.

SAMHSA has awarded new grants and continued funding to 25 grantees, Cohort 5 (15 grantees) with project period of Sept 30, 2023, to Sept 29, 2028; and Cohort 4 (10 grantees; includes one tribal organization) with project period of March 31, 2021, to March 30, 2026. SAMHSA has requested funding for 11 grantees to be funded as Cohort 6 in the President’s fiscal year 2025 budget.

The Zero Suicide Evaluation is designed to evaluate the implementation, effectiveness, and overall impact of the Zero Suicide program upon grantees in the United States. The evaluation will assess Zero Suicide program activities implemented

by grantees and ultimately provide SAMHSA with the information needed to understand and document program effectiveness on reducing suicide morbidity and mortality, specifically among those who encounter the healthcare system. While acknowledging the lack of evidence for cultural adaptations to evidence-based and empirically supported treatments and interventions, and that research has not been conducted with historically marginalized and underserved communities (e.g., Black, Asian, Autistic, Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex plus (LGBTQI+), and others), Zero Suicide pushes systems to ensure that clients’ cultural contexts are considered and honored in what treatments are offered and how those treatments are adapted. Thus, with behavioral health equity as a central component woven throughout the Zero Suicide Framework, the proposed evaluation will ensure that each study includes specific behavioral health equity tenets to ensure a culturally specific understanding of Zero Suicide implementation, outcomes, and impacts.

The Zero Suicide Evaluation includes four studies: Systems Change, Workforce, Consumer Experience, and Impact. The Systems Change Study is designed to understand how grantees are implementing the Zero Suicide Program in accordance with the Zero Suicide Framework, the core activities accomplished, and indicators of sustainable systems change (i.e., policy and practice changes, infrastructure changes, organizational culture). The Systems Change Study will leverage two surveys: the Prevention Strategies Inventory (PSI), and the Behavioral Health Provider Survey (BHPS). Additionally, the Systems Change Study will be informed through Case Studies and Cost Sub-Studies, using Key Informant Interviews to gather information.

The purpose of the Workforce Study is to document staff awareness and perceptions associated with the Zero Suicide activities implemented by Zero

Suicide-participating Healthcare Organizations (HCOs). This study also seeks to understand the utilization, outcomes, and sustainment of training programs intended to increase the knowledge, confidence, and skills among staff to address suicide, both in the short and long-term. The Workforce Study will be informed by several surveys: the Workforce Survey (WS), the Training Activity Summary Page (TASP), and the Training Utilization and Preservation Survey (TUPS).

The Consumer Experience Study will assess the relationship between Zero Suicide activities and key clinical outcomes (i.e., suicide risk, depression), along with consumer perceptions of care, access to care, services received, and treatment adherence. The Consumer Experience Study will be informed by the BHPS, Consumer Experience Survey (CES), Clinical Outcomes Form (COF), and Grantee Performance Data. The CES and the COF target and follow those receiving services through a Zero Suicide grantee from the point when they enroll in services to when they discharge from services.

The Impact Study will use secondary data and quasi-experimental designs to develop a control group and estimate the causal impact of the Zero Suicide Program on suicide morbidity and mortality.

Ultimately, the purpose of the Zero Suicide Evaluation is to build the program’s knowledge base of effectiveness by thoroughly describing the implementation, outcomes, and impact of a program meant to reduce deaths by suicide.

The total annualized burden is an estimated 15,504 respondents for the Zero Suicide instruments, with a combined hourly estimate to be 4,902 hours. Burden estimates are based on the data collection requirements and the number of respondents. The estimated response burden to collect this information associated with the Zero Suicide Evaluation annualized over the requested 3-year clearance period is presented below:

TOTAL AND ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES AND HOURS

Type of respondent	Form	Number of respondents per year	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate	Total cost
Project Evaluator 1 ..	PSI	40	4	160	1	160	\$61.53	\$9,845
Grantee/HCO admin- istrator 2.	BHPS	47	1	47	0.5	24	61.53	1,477
Grantee/HCO admin- istrator 2.	KII-Case Studies	7	1	7	1	7	61.53	431
HCO Staff 3	KII-Case Studies	27	1	27	1	27	26.81	724
Grantee/HCO admin- istrator 2.	KII-Cost Sub studies	2	1	2	1	2	61.53	123
HCO Staff 3	WFS	9,400	1	9,400	0.25	2,350	26.81	63,004
Project Evaluator1 ...	TASP	40	10	400	0.25	100	36.67	3,667

TOTAL AND ANNUALIZED AVERAGES: RESPONDENTS, RESPONSES AND HOURS—Continued

Type of respondent	Form	Number of respondents per year	Responses per respondent	Total number of responses	Burden per response (hours)	Annual burden (hours)	Hourly wage rate	Total cost
HCO Staff 3	TUPS-Baseline	3,334	1	3,334	0.25	834	26.81	22,360
HCO Staff 3	TUPS-6 month	252	1	252	0.5	126	26.81	3,378
HCO Staff 3	TUPS-12 month	189	1	189	0.5	95	26.81	2,547
Clinicians	C-SIF	180	8.3	1,494	0.25	374	57.21	21,397
Consumer	CES-Baseline	1,128	1	1,128	0.4	451	7.25	3,270
Consumer	CES-6-month	843	1	843	0.4	337	7.25	2,443
Consumer	C-KII	15	1	15	1	15	7.25	109
Total .....	.....	15,504	.....	17,298	.....	4,902	.....	134,773

Abbreviation: HCO=Healthcare Organization

¹ BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Survey Researchers (code 19–3022); https://www.bls.gov/oes/cuSeetrent/naics5_541720.htm

² BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Medical and Health Services Managers (code 11–9111); <https://www.bls.gov/oes/current/oes119111.htm>

³ BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Community and Social Service Occupations (code 29–1000); <https://www.bls.gov/oes/current/oes210000.htm>

⁴ BLS OES May 2022 National Industry-Specific Occupation Employment and Wage Estimates average annual salary for Health Diagnosing and Treating Practitioners (code 29–1000); https://www.bls.gov/oes/current/oes_nat.htm#29-0000

⁵ BLS OES May 2022 Characteristics of minimum wage workers, 2022; <https://www.bls.gov/opub/reports/minimum-wage/2022/home.htm#:~:text=In%202022%2C%2078.7%20million%20workers,wage%20of%20%247.25%20per%20hour.>

Send comments to SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E45, Rockville, MD 20852 OR email him a copy at samhsapra@samhsa.hhs.gov. Written comments should be received by November 12, 2024.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2024–20435 Filed 9–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning the opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are 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) ways to enhance the

quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: PEERS Harm Reduction Evaluation: Point-in-Time Harm Reduction (PiT HR) Survey

Funded in FY 2022, the Harm Reduction (HR) Grant Program aims to support community-based overdose prevention programs, syringe services programs, and other harm reduction services. Funding is used to enhance overdose and other types of prevention activities to help control the spread of infectious diseases and the consequences of such diseases for individuals with, or at risk of developing substance use disorders (SUD), support distribution of FDA-approved overdose reversal medication to individuals at risk of overdose, build connections for individuals at risk for, or with, a SUD to overdose education, counseling, and health education, refer individuals to treatment for infectious diseases such as HIV, sexually transmitted infections (STIs), and viral hepatitis, and encourage such individuals to take steps to reduce the negative personal and public health impacts of substance use or misuse. As part of the Harm Reduction grant program evaluation, conducted through the Program Evaluation, Effectiveness, and Review Services (PEERS) contract, SAMHSA's Center for Substance Abuse Prevention (CSAP) is requesting approval from the Office of Management and Budget (OMB) to administer a Point-In-Time Harm Reduction (PiT HR)

survey to better understand the program.

The PiT HR survey will elicit information from participants of the Harm Reduction Grant Program grantees to assess the extent to which grantees have achieved CSAP's goals of strengthening harm reduction programs. Data from the survey will help CSAP better understand: (1) the socio-demographic and drug use characteristics of participants who receive HR services and supplies across the country; (2) the HR services and supplies participants received and unmet needs; and (3) the social-cultural and structural barriers to receiving HR services and supplies. This anonymous survey will allow for an assessment of whether HR programs are reaching high-risk and underserved populations and populations experiencing behavioral health disparities and will help guide improvements to the HR Grant Program. The data will be aggregated across grantee programs to provide CSAP with a national picture of the population receiving HR services and supplies, the services and supplies they access, and perceived barriers to ensure the HR Grant Program meets its goals. Grantees will be provided with brief grantee-level reports providing actionable information to inform and strengthen their services. The grantee reports will provide insight into the populations they serve, the extent to which their services reach the populations they've identified as priority populations, whether the program meets the needs of their participants, and what barriers remain to service access. These reports will inform the implementation of their programs and help them address gaps in service delivery. HR Program Grantees do not collect survey data from their

participants. The PiT HR Survey has been designed to answer questions that cannot be answered with existing data with minimal burden on grantees and respondents. It strengthens the evaluation by including participant voice.

Most HR programs will administer the survey electronically on a tablet using the web-based survey. Tablets will be provided to the harm reduction grantees for this purpose during the survey administration period. The tablets will include an offline data collection function, which utilizes an app that runs directly from the tablet and collects and securely stores data on the tablet until or unless the tablet is connected to Wi-Fi. Once the tablet is connected to Wi-Fi, stored surveys are automatically uploaded to a secure online database and are no longer accessible on the tablet. Utilizing the offline data collection functions ensures that programs can participate even if they do not have stable Wi-Fi connections. In addition, the audio-enabled feature will assist participants who want to take the survey but have vision difficulties or lower literacy levels without requiring staff to read the survey questions to them. Once uploaded, survey data will be easily accessible by the PEERS evaluation staff who have access to the project survey system, allowing staff to provide ongoing data quality monitoring throughout the process. Grantees will receive financial compensation to

support their efforts to recruit and administer the survey.

A pen-and-paper version of the PiT HR Survey will be available to grantees who would prefer this approach when conducting outreach in the community where the use of the tablets may raise staff safety risks. Programs that provide outreach services may elect to use the pen-and-paper or the tablet version of the survey depending on their preferences and the communities they serve. The pen-and-paper version of the survey would be read aloud by staff to address literacy concerns. Completed paper surveys will be stored in locked cabinets in the HR Grantee Program offices and mailed via certified mail to the PEERS office. PEERS will immediately store the paper survey in locked cabinets, accessible only to the PEERS evaluation team. The raw data will be entered into SPSS and stored on password-protected computers requiring multifactor authentication. No person outside of the PEERS evaluation team will have access to the data. All data will be closely safeguarded, and no institutional or individual identifiers will be used in reports. Only aggregated data will be reported. SAMHSA and its contractors will not receive identifiable participant records.

Those who participate in the survey will receive a \$25 Visa gift card to compensate them for the 25-minute duration of the PiT HR Survey, which includes time for recruitment, consent,

survey completion, and gift card receipt. The primary consequence of not collecting the PiT HR survey data is that CSAP would not have current information to understand (1) whether the target populations of the Harm Reduction Grant Program are being reached; (2) whether the service needs of the target populations are being met; and (3) the barriers target populations face in utilizing HR services to inform future grant programs. No other HR evaluation component brings in the often-overlooked voice of the recipients of HR services and supplies.

The PiT HR Survey is cross-sectional, therefore the data will be collected only once from any survey participant. Individual grantees vary from small entities to large provider organizations. Every effort has been made to minimize the number of survey items asked of respondents down to the least number of items necessary to accomplish the objectives described within. As a result, there is no significant impact on small entities.

Estimated Total Burden for Harm Reduction Point-in-Time Data Collection

The estimates in this table reflect the maximum annual burden for the proposed PiT HR Survey at the 25 HR grantee sites funded through May 2025. These estimates are based on informal pilot testing of the instrument among PEERS staff.

TABLE 1—ESTIMATES OF ANNUALIZED HOUR BURDEN

SAMHSA tool	Number of respondents	Responses per respondent	Total number of responses	Burden hours per response	Total burden hours	Hourly wage ¹	Total hour cost
PiT HR Survey	25 sites * 50 participants = 1,250.	1	1,250	0.417	521.25	\$34.27	\$17,863.24

¹ The average hourly wage for a US worker in January 2024 is \$34.27 based on US Bureau of Labor statistics. (<https://www.bls.gov/news.release/empsit.nr0.htm>).

Send comments to SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 OR email him a copy at samhsapra@samhsa.hhs.gov. Written comments should be received by November 12, 2024.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2024-20431 Filed 9-10-24; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4796-DR; Docket ID FEMA-2024-0001]

Iowa; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA-4796-DR), dated

June 24, 2024, and related determinations.

DATES: This amendment was issued August 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 24, 2024.

Monona County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20481 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4781–DR; Docket ID FEMA–2024–0001]

Texas; Amendment No. 17 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4781–DR), dated May 17, 2024, and related determinations.

DATES: This amendment was issued August 9, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 17, 2024.

Bowie and Red River Counties for Public Assistance.

Nacogdoches and Navarro Counties for Public Assistance (already designated for Individual Assistance).

Smith County for Public Assistance (already designated for Individual Assistance

and assistance for emergency protective measures (Category B), limited to direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20480 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4800–DR; Docket ID FEMA–2024–0001]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–4800–DR), dated July 15, 2024, and related determinations.

DATES: The declaration was issued July 15, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 15, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of April 25 to April 30, 2024, is of sufficient

severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Andrew P. Meyer, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Allen, Anderson, Bourbon, Chautauqua, Cherokee, Elk, Greenwood, Linn, Morris, Neosho, Pottawatomie, and Wilson Counties for Public Assistance.

All areas within the State of Kansas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20492 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4806–DR; Docket ID FEMA–2024–0001]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–4806–DR), dated August 10, 2024, and related determinations.

DATE: The declaration was issued August 10, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 10, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Debby beginning on August 1, 2024, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, John E. Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Florida have been designated as adversely affected by this major disaster:

Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Manatee, Sarasota, Suwannee, and Taylor Counties for Individual Assistance.

Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Madison, Manatee, Sarasota, Suwannee, and Taylor Counties for debris removal and emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

All areas within the State of Florida are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20507 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2457]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before December 10, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA–B–2457, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act

of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements

outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below.

The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Siskiyou County, California and Incorporated Areas Project: 20-09-0024S Preliminary Date: March 28, 2024	
City of Etna	City Hall, 442 Main Street, Etna, CA 96027.
Town of Fort Jones	Town Hall, 11960 East Street, Fort Jones, CA 96032.
Unincorporated Areas of Siskiyou County	Siskiyou County Planning Department, 806 South Main Street, Yreka, CA 96097.

[FR Doc. 2024-20525 Filed 9-10-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4804-DR; Docket ID FEMA-2024-0001]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA-4804-DR), dated July 23, 2024, and related determinations.

DATES: The declaration was issued July 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 23, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, straight-line winds, tornadoes, landslides, and mudslides during the period of May 21 to May 27, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs

Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, E. Craig Levy Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Kentucky have been designated as adversely affected by this major disaster:

Butler, Caldwell, Calloway, Christian, Clay, Greenup, Hopkins, Knox, Logan, Muhlenberg, Simpson, Todd, Trigg, Warren, and Whitley Counties for Individual Assistance.

Adair, Allen, Ballard, Barren, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Clay, Clinton, Crittenden,

Cumberland, Edmonson, Estill, Fulton, Garrard, Graves, Grayson, Green, Hart, Hickman, Hopkins, Jackson, Knox, Larue, Laurel, Lee, Leslie, Livingston, Logan, Lyon, Marshall, McCracken, McCreary, McLean, Meade, Menifee, Metcalfe, Monroe, Muhlenberg, Ohio, Owsley, Pulaski, Rockcastle, Russell, Simpson, Todd, Trigg, Warren, Washington, Wayne, Whitley, and Woodford Counties for Public Assistance.

All areas within the Commonwealth of Kentucky are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20493 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4782–DR; Docket ID FEMA–2024–0001]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4782–DR), dated May 22, 2024, and related determinations.

DATES: This change occurred on August 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order

12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20490 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2455]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain

management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before December 10, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA–B–2455, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown

on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after

FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address

listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Johnson County, Iowa and Incorporated Areas Project: 17-07-0294S Preliminary Date: April 17, 2024	
City of Coralville	City Hall, 1512 7th Street, Coralville, IA 52241.
City of Hills	City Office, 201 North 1st Street, Hills, IA 52235.
City of Iowa City	Civic Center, 410 East Washington Street, Iowa City, IA 52240.
City of North Liberty	City Hall, 360 North Main Street, North Liberty, IA 52317.
City of Oxford	City Hall, 205 North Augusta Avenue, Oxford, IA 52322.
City of Shueyville	Shueyville City Hall, 2863 120th Street Northeast, Swisher, IA 52338.
City of Solon	City Hall, 101 North Iowa Street, Solon, IA 52333.
City of Swisher	City Hall, 66 2nd Street Southwest, Swisher, IA 52338.
City of Tiffin	City Hall, 300 Railroad Street, Tiffin, IA 52340.
City of University Heights	City Hall, 1302 Melrose Avenue, University Heights, IA 52246.
Johnson County Unincorporated Areas	Johnson County Planning Development and Sustainability Department, 913 South Dubuque Street, Iowa City, IA 52240.
Love County, Oklahoma and Incorporated Areas Project: 23-06-0039S Preliminary Date: May 3, 2024	
City of Marietta	City Hall, 700 South Highway 77, Marietta, OK 73448.
Town of Leon	Town Clerk's Office, 13206 Church Street, Leon, OK 73441.
Town of Thackerville	City Hall, 19103 US Highway 77, Thackerville, OK 73459.
Unincorporated Areas of Love County	Love County Commissioners Office, 405 West Main Street, Suite 101, Marietta, OK 73448.

[FR Doc. 2024-20524 Filed 9-10-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2024-0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter

referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities.

DATES: Each LOMR was finalized as in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at <https://msc.fema.gov>.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472,

(202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National

Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65. The currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the

floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP. The changes in flood hazard

determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at <https://msc.fema.gov>.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Alabama: St. Clair (FEMA Docket No.: B-2437).	Unincorporated areas of St. Clair County (23-04-6468P).	The Honorable Stan Batemon, Chair, St. Clair County Board of Commissioners, 165 5th Avenue, Suite 100, Ashville, AL 35953.	St. Clair County Engineering Department, 31588 Highway 231, Ashville, AL 35953.	Aug. 23, 2024	010290
Colorado:					
Arapahoe (FEMA Docket No.: B-2435).	City of Aurora (23-08-0403P).	The Honorable Mike Coffman, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Public Works Department, 15151 East Alameda Parkway, Aurora, CO 80012.	Aug. 16, 2024	080002
Arapahoe (FEMA Docket No.: B-2435).	Unincorporated areas of Arapahoe County (23-08-0403P).	Carrie Warren-Gully, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80210.	Arapahoe County Public Works and Development Department, 6924 South Lima Street, Centennial, CO 80112.	Aug. 16, 2024	080011
Larimer (FEMA Docket No.: B-2437).	City of Loveland (22-08-0337P).	The Honorable Jacki Marsh, Mayor, City of Loveland, 500 East 3rd Street, Suite 330, Loveland, CO 80537.	City Hall, 700 Wood Street, Loveland, CO 80537.	Aug. 19, 2024	080103
Larimer (FEMA Docket No.: B-2437).	Unincorporated areas of Larimer County (22-08-0337P).	John Kefalas, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, CO 80522.	Larimer County Engineering Department, 200 West Oak Street, Suite 3000, Fort Collins, CO 80521.	Aug. 19, 2024	080101
Weld (FEMA Docket No.: B-2435).	City of Greeley (24-08-0061P).	The Honorable John Gates, Mayor, City of Greeley, 1000 10th Street, Greeley, CO 80631.	City Hall, 1000 10th Street, Greeley, CO 80631.	Aug. 15, 2024	080184
Connecticut: New Haven (FEMA Docket No.: B-2437).	City of Meriden (23-01-0147P).	The Honorable Kevin Scarpati, Mayor, City of Meriden, 142 East Main Street, Meriden, CT 06450.	Public Works Department, 142 East Main Street, Meriden, CT 06450.	Aug. 8, 2024	090081
Florida:					
Escambia (FEMA Docket No.: B-2435).	Unincorporated areas of Escambia County, (23-04-3556P).	Steven Barry, Chair, Escambia County Board of Commissioners, 3363 West Park Place, Pensacola, FL 32505.	Escambia County Building Department, 3363 West Park Place, Pensacola, FL 32505.	Aug. 9, 2024	120080
Pasco (FEMA Docket No.: B-2435).	Unincorporated areas of Pasco County (23-04-6016P).	Ron Oakley, Chair, Pasco County Board of Commissioners, 37918 Meridian Avenue, Dade City, FL 33525.	Pasco County Building Construction Services Department, 8661 Citizens Drive, Suite 100, New Port Richey, FL 34654.	Aug. 12, 2024	120230
Seminole (FEMA Docket No.: B-2435).	City of Oviedo (23-04-6041P).	Bryan Cobb, City of Oviedo Manager, 400 Alexandria Boulevard, Oviedo, FL 32762.	Public Works Department, 1655 Evans Street, Oviedo, FL 32765.	Aug. 15, 2024	120293
Seminole (FEMA Docket No.: B-2435).	Unincorporated areas of Seminole County (23-04-6041P).	Darren Gray, Seminole County Manager, 1101 East 1st Street, Sanford, FL 32771.	Seminole County Building Division, 1101 East 1st Street, Sanford, FL 32771.	Aug. 15, 2024	120289
Volusia (FEMA Docket No.: B-2437).	City of Daytona Beach (23-04-5711P).	The Honorable Derrick Henry, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	City Hall, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	Aug. 26, 2024	125099
Kentucky: Fayette (FEMA Docket No.: B-2437).	Lexington-Fayette Urban County Government, (23-04-5603P).	The Honorable Linda Gorton, Mayor, Lexington-Fayette Urban, County Government, 101 East Main Street, Lexington, KY 40507.	Engineering Department, 101 East Vine Street, Suite 400, Lexington, KY 40507.	Aug. 9, 2024	210067
Maine: Penobscot (FEMA Docket No.: B-2435).	Town of Hampden (23-01-0389P).	Paula Scott, Manager, Town of Hampden, 106 Western Avenue, Hampden, ME 04444.	Department of Public Safety, Code Enforcement Office, 106 Western Avenue, Hampden, ME 04444.	Aug. 7, 2024	230168
North Carolina:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Date of modification	Community No.
Buncombe (FEMA Docket No.: B-2445).	City of Asheville (22-04-5732P).	The Honorable Esther E. Manheimer, Mayor, City of Asheville, P.O. Box 7148, Asheville, NC 28802.	Stormwater Services and Utility Department, 161 South Charlotte Street, Asheville, NC 28801.	Aug. 26, 2024.	370032
Buncombe (FEMA Docket No.: B-2445).	Town of Woodfin (22-04-5732P).	The Honorable Jim McAllister, Mayor, Town of Woodfin, 90 Elk Mountain Road, Woodfin, NC 28804.	Planning and Zoning Department, 90 Elk Mountain Road, Woodfin, NC 28804.	Aug. 26, 2024.	370380
Buncombe (FEMA Docket No.: B-2445).	Unincorporated areas of Buncombe County (22-04-5732P).	Brownie Newman, Chair, Buncombe County Board of Commissioners, 200 College Street, Suite 300, Asheville, NC 28801.	Buncombe County Planning and Development Department, 46 Valley Street Asheville, NC 28801.	Aug. 26, 2024.	370031
Pennsylvania: Dauphin (FEMA Docket No.: B-2437).	Township of Derry (23-03-0300P).	Chris Abruzzo, Chair, Township of Derry Board of Supervisors, 600 Clearwater Road, Hershey, PA 17033.	Department of Community Development, 600 Clearwater Road, Hershey, PA 17033.	Aug. 23, 2024	420376
South Carolina:					
Berkeley (FEMA Docket No.: B-2437).	Unincorporated areas of Berkeley County (22-04-5275P).	Johnny Cribb, Berkeley County Supervisor, 1003 North Highway 52, Moncks Corner, SC 29461.	Berkeley County Flood Map Repository, 1003 North Highway 52, Moncks Corner, SC 29461.	Aug. 22, 2024	450029
Horry, (FEMA Docket No.: B-2435).	Unincorporated areas of Horry County, (23-04-0840P).	Johnny Gardner, Chair, Horry County Council, 1301 2nd Avenue, Conway, SC 29526.	Horry County Code Enforcement Department, 1301 2nd Avenue, Conway, SC 29526.	Aug. 16, 2024	450104
Jasper (FEMA Docket No.: B-2435).	City of Hardeeville (23-04-4472P).	The Honorable Harry Williams, Mayor, City of Hardeeville, P.O. Box 609, Hardeeville, SC 29927.	City Hall, 205 Main Street, Hardeeville, SC 29927.	Aug. 8, 2024	450113
Jasper (FEMA Docket No.: B-2435).	Unincorporated areas of Jasper County (23-04-4472P).	Andrew P. Fulghum, Jasper County Administrator, P.O. Box 1149, Ridgeland, SC 29936.	Jasper County Government Building, 358 3rd Avenue, Ridgeland, SC 29936.	Aug. 8, 2024	450112
York (FEMA Docket No.: B-2437).	Unincorporated areas of York County (23-04-6210P).	David Hudspeth, York County Manager, 6 South Congress Street, York, SC 29745.	York County Planning and Development Services Department, 18 West Liberty Street, York, SC 29745.	Aug. 22, 2024	450193
Texas:					
Atascosa (FEMA Docket No.: B-2437).	Unincorporated areas of Atascosa County (23-06-1680P).	The Honorable Weldon Cude, Atascosa County Judge, 1 Courthouse Circle Drive, Suite 206, Jourdanton, TX 78026.	Atascosa County Courthouse, 1 Courthouse Circle Drive, Jourdanton, TX 78026.	Aug. 8, 2024	480014
Bexar (FEMA Docket No.: B-2439).	City of San Antonio (24-06-0704P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78214.	Aug. 26, 2024	480045
Collin (FEMA Docket No.: B-2435).	City of Allen (23-06-0949P).	The Honorable Baine Brooks, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	City Hall, 305 Century Parkway, Allen, TX 75013.	Aug. 19, 2024	480131
Collin.	City of Frisco (24-06-0036P).	The Honorable Jeff Cheney, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	Engineering Department, 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.	Aug. 19, 2024	480134
Collin (FEMA Docket No.: B-2435).	City of Parker (23-06-0949P).	The Honorable Lee Pettie, Mayor, City of Parker, 5700 East Parker Road, Parker, TX 75002.	City Hall, 5700 East Parker Road, Parker, TX 75002.	Aug. 19, 2024	480139
Collin.	City of Plano (24-06-0036P).	The Honorable John B. Muns, Mayor, City of Plano, 1520 K Avenue, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Plano, TX 75074.	Aug. 19, 2024	480140
Collin (FEMA Docket No.: B-2435).	Unincorporated areas of Collin County (23-06-0949P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, McKinney, TX 75071.	Collin County, Juvenile Justice Alternative Education Program Building, 4690 Community Avenue, McKinney, TX 75071.	Aug. 19, 2024	480130
Fort Bend (FEMA Docket No.: B-2435).	City of Missouri City (23-06-0961P).	The Honorable Robin J. Elackatt, Mayor, City of Missouri City, 1522 Texas Parkway, Missouri City, TX 77489.	City Hall, 1522 Texas Parkway, Missouri City, TX 77489.	Aug. 9, 2024	480304
Fort Bend (FEMA Docket No.: B-2435).	Unincorporated areas of Fort Bend County (23-06-0961P).	The Honorable K.P. George, Fort Bend County Judge, 401 Jackson Street, Richmond, TX 77469.	Fort Bend County Engineering Department, 401 Jackson Street, 4th Floor, Richmond, TX 77469.	Aug. 9, 2024	480228
Grayson (FEMA Docket No.: B-2435).	City of Van Alstyne (23-06-2387P).	The Honorable Jim Atchison, Mayor, City of Van Alstyne, P.O. Box 274, Van Alstyne, TX 75495.	City Hall, 152 North Main Drive, Van Alstyne, TX 75495.	Aug. 14, 2024	481620
Grayson (FEMA Docket No.: B-2435).	Unincorporated areas of Grayson County (23-06-2387P).	The Honorable Bruce Dawsey, Grayson County Judge, 100 West Houston Street, Sherman, TX 75090.	Grayson County Courthouse, 100 West Houston Street, Sherman, TX 75090.	Aug. 14, 2024	480829
Utah: Tooele (FEMA Docket No.: B-2439).	City of Tooele (23-08-0698P).	The Honorable Debbie Winn, Mayor, City of Tooele, 90 North Main Street, Tooele, UT 84074.	Engineering Department, 90 North Main Street, Tooele, UT 84074.	Aug. 22, 2024	490145

[FR Doc. 2024–20521 Filed 9–10–24; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4796–DR; Docket ID FEMA–2024–0001]

Iowa; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–4796–DR), dated June 24, 2024, and related determinations.

DATES: This amendment was issued August 28, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 24, 2024.

Dubuque and Jackson Counties for Public Assistance.

Scott County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20486 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4761–DR; Docket ID FEMA–2024–0001]

New Hampshire; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4761–DR), dated February 27, 2024, and related determinations.

DATES: This change occurred on August 12, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William F. Roy as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20495 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4804–DR; Docket ID FEMA–2024–0001]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4804–DR), dated July 23, 2024, and related determinations.

DATES: This amendment was issued August 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 23, 2024.

Harlan and Perry Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20501 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4795–DR; Docket ID FEMA–2024–0001]

New Mexico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4795–DR), dated June 20, 2024, and related determinations.

DATE: This amendment was issued July 30, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 30, 2024, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from the South Fork Fire, Salt Fire, and flooding beginning on June 17, 2024, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”).

Therefore, I amend my declaration of June 20, 2024, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs for a continuous 30-day period of the State’s choosing within the first 120 days from the start of the incident period. In addition, the State is permitted to select separate 30-day periods for each category of work.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20504 Filed 9–10–24; 8:45 am]
BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4702–DR; Docket ID FEMA–2024–0001]

Kentucky; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4702–DR), dated April 10, 2023, and related determinations.

DATES: This change occurred on August 16, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20457 Filed 9–10–24; 8:45 am]
BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2460]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.
ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The

flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required.

They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,
Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona: Mojave	City of Kingman (24-09-0317P).	The Honorable Ken Watkins, Mayor, City of Kingman, 310 North 4th Street, Kingman, AZ 86401.	Mohave County Flood Control District, 3250 East Kino Avenue, Kingman, AZ 86409.	https://msc.fema.gov/portal/advanceSearch .	Dec. 5, 2024	040060
Colorado:						
Ebert	Town of Elizabeth (23-08-0679P).	The Honorable Tammy Payne, Mayor, Town of Elizabeth, P.O. Box 159, Elizabeth, CO 80107.	Town Hall, 321 South Banner Street, Elizabeth, CO 80107.	https://msc.fema.gov/portal/advanceSearch .	Dec. 6, 2024	080056
Ebert	Unincorporated areas of Elbert County (23-08-0679P).	Chris Richardson, Chair, Elbert County Board of Commissioners, P.O. Box 7, Kiowa, CO 80117.	Elbert County Government, 215 Comanche Street, Kiowa, CO 80117.	https://msc.fema.gov/portal/advanceSearch .	Dec. 6, 2024	080055
Connecticut: Fairfield.	Town of Stratford (24-01-0076P).	The Honorable Laura R. Hoydick, Mayor, Town of Stratford, 2725 Main Street, Stratford, CT 06615.	Building Department, 2725 Main Street, Stratford, CT 06615.	https://msc.fema.gov/portal/advanceSearch .	Nov. 25, 2024	090016
Florida:						
Hillsborough ...	City of Plant City (23-04-5362P).	Bill McDaniel, Manager, City of Plant City, 302 West Reynolds Street, Plant City, FL 33564.	City Hall, 302 West Reynolds Street, Plant City, FL 33564.	https://msc.fema.gov/portal/advanceSearch .	Nov. 18, 2024	120113
Monroe	Unincorporated areas of Monroe County (24-04-3773P).	The Honorable Holly Merrill Raschein, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	https://msc.fema.gov/portal/advanceSearch .	Dec. 6, 2024	125129
Nassau	Town of Callahan (23-04-2277P).	The Honorable Randy Knagge, Mayor, Town of Callahan, 542300 U.S. Highway 1, Callahan, FL 32011.	Town Hall, 542300 U.S. Highway 1, Callahan, FL 32011.	https://msc.fema.gov/portal/advanceSearch .	Dec. 12, 2024	120171
Nassau	Unincorporated areas of Nassau County (23-04-2277P).	Taco Pope, Nassau County Manager, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County Building Department, 96161 Nassau Place, Yulee, FL 32097.	https://msc.fema.gov/portal/advanceSearch .	Dec. 12, 2024	120170

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Nassau	Unincorporated areas of Nassau County (24-04-1544P).	Taco Pope, Nassau County Manager, 96135 Nassau Place, Suite 1, Yulee, FL 32097.	Nassau County Building Department, 96161 Nassau Place, Yulee, FL 32097.	https://msc.fema.gov/portal/advanceSearch .	Dec. 5, 2024	120170
Polk	Unincorporated areas of Polk County (24-04-1992P).	Bill Beasley, Polk County Manager, 330 West Church Street, Bartow, FL 33830.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	https://msc.fema.gov/portal/advanceSearch .	Dec. 5, 2024	120261
Illinois:						
Kane	Unincorporated areas of Kane County (24-05-0491P).	Corinne Pierog, Chair, Kane County Board, 719 South Batavia Avenue, Building A, Geneva, IL 60134.	Kane County Water Resources Department, 719 South Batavia Avenue, Building A, Geneva, IL 60134.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	170896
Macon	City of Decatur (24-05-1373P).	The Honorable Julie Moore Wolfe, Mayor, City of Decatur, 1 Gary K. Anderson Plaza, Decatur, IL 62523.	City Hall, 1 Gary K. Anderson Plaza, Decatur, IL 62523.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	170429
Will	Village of New Lenox (24-05-0965P).	The Honorable Timothy Baldermann, Mayor, Village of New Lenox, 1 Veterans Parkway, New Lenox, IL 60451.	Village Hall, 1 Veterans Parkway, New Lenox, IL 60451.	https://msc.fema.gov/portal/advanceSearch .	Dec. 6, 2024	170706
Minnesota:						
Anoka	City of Centerville (23-05-1374P).	The Honorable D. Love, Mayor, City of Centerville, 1880 Main Street, Centerville, MN 55038.	City Hall, 1880 Main Street, Centerville, MN 55038.	https://msc.fema.gov/portal/advanceSearch .	Dec. 9, 2024	270008
Anoka	City of Lino Lakes (23-05-1374P).	The Honorable Rob Rafferty, Mayor, City of Lino Lakes, 600 Town Center Parkway, Lino Lakes, MN 55014.	City Hall, 600 Town Center Parkway, Lino Lakes, MN 55014.	https://msc.fema.gov/portal/advanceSearch .	Dec. 9, 2024	270015
Mississippi: Hancock.	City of Bay St. Louis (23-04-5378P).	The Honorable Mike Favre, Mayor, City of Bay St. Louis, 688 Highway 90, Bay St. Louis, MS 39520.	Chiniche Engineering and Surveying, 407 Highway 90, Bay St. Louis, MS 39520.	https://msc.fema.gov/portal/advanceSearch .	Dec. 6, 2024	285251
New Mexico: Bernalillo.	City of Albuquerque (24-06-0613P).	The Honorable Tim Keller, Mayor, City of Albuquerque, 1 Civic Plaza Northwest, Albuquerque, NM 87102.	Planning Department, 600 2nd Street Northwest, Albuquerque, NM 87102.	https://msc.fema.gov/portal/advanceSearch .	Dec. 5, 2024	350002
North Carolina:						
Craven	City of Havelock (23-04-5092P).	The Honorable William L. Lewis, Jr., Mayor, City of Havelock, P.O. Box 368, Havelock, NC 28532.	Planning Department, 1 Governmental Avenue, Havelock, NC 28532.	https://msc.fema.gov/portal/advanceSearch .	Oct. 7, 2024	370265
Guilford	City of Greensboro (23-04-3460P).	The Honorable Nancy Vaughan, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	Stormwater Planning Division, 2602 South Elm, Eugene Street, Greensboro, NC 27402.	https://msc.fema.gov/portal/advanceSearch .	Dec. 9, 2024	375351
Guilford	Unincorporated areas of Guilford County (23-04-3460P).	Melvin Alson, Chair, Guilford County Board of Commissioners, 301 West Market Street, Greensboro, NC 27401.	Guilford County Planning Department, 400 West Market Street, Greensboro, NC 27401.	https://msc.fema.gov/portal/advanceSearch .	Dec. 9, 2024	370111
Rowan	Unincorporated areas of Rowan County (23-04-5146P).	Greg Edds, Chair, Rowan County Board of Commissioners, 130 West Innes Street, Salisbury, NC 28144.	Rowan County Planning and Development Department, 402 North Main Street, #204, Salisbury, NC 28144.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	370351
Surry	Unincorporated areas of Surry County (23-04-1415P).	Van Tucker, Chair, Surry County Board of Commissioners, P.O. Box 1467, Dobson, NC 27017.	Surry County Central Permitting Center, 122 Hamby Road, Dobson, NC 27017.	https://msc.fema.gov/portal/advanceSearch .	Dec. 12, 2024	370364
Wake	Town of Holly Springs (23-04-3934P).	The Honorable Sean Mayefskie, Mayor, Town of Holly Springs, P.O. Box 8, Holly Springs, NC 27540.	Engineering Department, 128 South Main Street, Holly Springs, NC 27540.	https://msc.fema.gov/portal/advanceSearch .	Dec. 2, 2024	370403
Wake	Unincorporated areas of Wake County (23-04-3934P).	Shinica Thomas, Chair, Wake County Board of Commissioners, P.O. Box 550, Raleigh, NC 27602.	Environmental Services Department, 337 South Salisbury Street, Raleigh, NC 27601.	https://msc.fema.gov/portal/advanceSearch .	Dec. 2, 2024	370368
South Carolina:						

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Sumter	City of Sumter (23-04-6479P).	The Honorable David P. Merchant, Mayor, City of Sumter, P.O. Box 1449, Sumter, SC 29150.	Sumter City-County Planning Department, 12 West Liberty Street, Suite C, Sumter, SC 29150.	https://msc.fema.gov/portal/advanceSearch .	Nov. 4, 2024	450184
Sumter	Unincorporated areas of Sumter County (23-04-6479P).	James T. McCain, Jr., Chair, Sumter County Council, 13 East Canal Street, Sumter, SC 29150.	Sumter City-County Planning Department, 12 West Liberty Street, Suite C, Sumter, SC 29150.	https://msc.fema.gov/portal/advanceSearch .	Nov. 4, 2024	450182
Texas:						
Bexar	City of San Antonio (24-06-0473P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Public Works Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	https://msc.fema.gov/portal/advanceSearch .	Nov. 12, 2024	480045
Bexar	City of San Antonio (24-06-0474P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Public Works Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	https://msc.fema.gov/portal/advanceSearch .	Nov. 25, 2024	480045
Bexar and Guadalupe.	City of Schertz (22-06-2567P).	The Honorable Ralph Gutierrez, Mayor, City of Schertz, 1400 Schertz Parkway, Schertz, TX 78154.	City Hall, 1400 Schertz Parkway, Schertz, TX 78154.	https://msc.fema.gov/portal/advanceSearch .	Nov. 4, 2024	480269
Bexar	Unincorporated areas of Bexar County (22-06-2567P).	The Honorable Peter Sakai, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Courthouse, 100 Dolorosa Street, San Antonio, TX 78205.	https://msc.fema.gov/portal/advanceSearch .	Nov. 4, 2024	480035
Collin	Unincorporated areas of Collin County (24-06-0873P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, McKinney, TX 75071.	Collin County Juvenile Justice Alternative Education Program Building, 4690 Community Avenue, McKinney, TX 75071.	https://msc.fema.gov/portal/advanceSearch .	Dec. 2, 2024	480130
Comanche	City of Comanche (23-06-1232P).	The Honorable Mary A. Boyd, Mayor, City of Comanche, 101 East Grand Avenue, Comanche, TX 76442.	City Hall, 101 East Grand Avenue, Comanche, TX 76442.	https://msc.fema.gov/portal/advanceSearch .	Nov. 8, 2024	480151
Dallas	City of Grand Prairie (23-06-2560P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, 300 West Main Street, Grand Prairie, TX 75050.	Stormwater Department, 300 West Main Street, Grand Prairie, TX 75050.	https://msc.fema.gov/portal/advanceSearch .	Nov. 18, 2024	485472
Dallas	City of Irving (23-06-2560P).	The Honorable Rick Stopfer, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	Capital Improvement Program, 825 West Irving Boulevard, Irving, TX 75060.	https://msc.fema.gov/portal/advanceSearch .	Nov. 18, 2024	480180
Dallas	City of Irving (24-06-0724P).	The Honorable Rick Stopfer, Mayor, City of Irving, 825 West Irving Boulevard, Irving, TX 75060.	Capital Improvement Program, 825 West Irving Boulevard, Irving, TX 75060.	https://msc.fema.gov/portal/advanceSearch .	Nov. 18, 2024	480180
Denton	City of Fort Worth (23-06-1526P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Dec. 5, 2024	480596
Denton	Unincorporated areas of Denton County (23-06-1526P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	https://msc.fema.gov/portal/advanceSearch .	Dec. 5, 2024	480774
Tarrant	City of Fort Worth (23-06-1147P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Nov. 4, 2024	480596
Tarrant	City of Fort Worth (24-06-0569P).	The Honorable Mattie Parker, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, Engineering Vault and Map Repository, 200 Texas Street, Fort Worth, TX 76102.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	480596

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Tarrant	City of White Settlement (23-06-1147P).	The Honorable Faron Young, Mayor, City of White Settlement, 214 Meadow Park Drive, White Settlement, TX 76108.	City Hall, 214 Meadow Park Drive, White Settlement, TX 76108.	https://msc.fema.gov/portal/advanceSearch .	Nov. 4, 2024	480617
Tarrant	Unincorporated areas of Tarrant County (24-06-0569P).	The Honorable Tim O'Hare, Tarrant County Judge, 100 East Weatherford Street, Suite 501, Fort Worth, TX 76196.	Tarrant County Transportation Department Engineering Section, 100 East Weatherford Street, Fort Worth, TX 76196.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	480582
Travis	City of Mustang Ridge (24-06-0742P).	The Honorable David Bunn, Mayor, City of Mustang Ridge, 12800 U.S. Highway 183 South, Buda, TX 78610.	City Hall, 12800 U.S. Highway 183 South, Mustang Ridge, TX 78610.	https://msc.fema.gov/portal/advanceSearch .	Dec. 9, 2024	481687
Utah:						
Cache	City of Logan (24-08-0055P).	The Honorable Holly H. Daines, Mayor, City of Logan, 290 North 100 West, Logan, UT 84321.	Public Works Department, 290 North 100 West, Logan, UT 84321.	https://msc.fema.gov/portal/advanceSearch .	Jan. 17, 2025	490019
Cache	City of Millville (24-08-0055P).	The Honorable David Hair, Mayor, City of Millville, P.O. Box 308, Millville, UT 84326.	City Hall, P.O. Box 308, Millville, UT 84326.	https://msc.fema.gov/portal/advanceSearch .	Jan. 17, 2025	490021
Cache	City of Nibley (24-08-0055P).	The Honorable Larry Jacobsen, Mayor, City of Nibley, 455 West 3200 South, Nibley, UT 84321.	Public Works Department, 455 West 3200 South, Nibley, UT 84321.	https://msc.fema.gov/portal/advanceSearch .	Jan. 17, 2025	490023
Cache	City of Providence (24-08-0055P).	The Honorable Kathleen Alder, Mayor, City of Providence, 164 North Gateway Drive, Providence, UT 84332.	City Hall, 164 North Gateway Drive, Providence, UT 84332.	https://msc.fema.gov/portal/advanceSearch .	Jan. 17, 2025	490226
Cache	City of River Heights (24-08-0055P).	The Honorable Jason Thompson, Mayor, River Heights City, 520 South 500 East, River Heights, UT 84321.	River Heights City Office, 520 South 500 East, River Heights, UT 84321.	https://msc.fema.gov/portal/advanceSearch .	Jan. 17, 2025	490240
Cache	Unincorporated areas of Cache County (24-08-0055P).	The Honorable David Zook, Cache County Executive, 199 North Main Street, Logan, UT 84321.	Public Works Department, 179 North Main Street, Suite 305, Logan, UT 84321.	https://msc.fema.gov/portal/advanceSearch .	Jan. 17, 2025	490012
Virginia:						
Independent City.	City of Suffolk (24-03-0330P).	The Honorable Michael D. Duman, Mayor, City of Suffolk, 442 West Washington Street, Suffolk, VA 23434.	Department of Planning and Community Development, 442 West Washington Street, Suffolk, VA 23434.	https://msc.fema.gov/portal/advanceSearch .	Dec. 5, 2024	510156
Fairfax	Unincorporated areas of Fairfax County (24-03-0112P).	Bryan Hill, Fairfax County Executive, 12000 Government Center Parkway, Fairfax, VA 22035.	Public Works and Environmental Services Department, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	https://msc.fema.gov/portal/advanceSearch .	Nov. 29, 2024	515525

[FR Doc. 2024-20522 Filed 9-10-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4663-DR; Docket ID FEMA-2024-0001]

Kentucky; Amendment No. 15 to Notice of a Major Disaster Declaration**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** Notice.**SUMMARY:** This notice amends the notice of a major disaster declaration for the

Commonwealth of Kentucky (FEMA-4663-DR), dated July 22, 2022, and related determinations.

DATES: This change occurred on August 16, 2024.**FOR FURTHER INFORMATION CONTACT:** Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20456 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4803–DR; Docket ID FEMA–2024–0001]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4803–DR), dated July 23, 2024, and related determinations.

DATES: The declaration was issued July 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 23, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in the State of Missouri resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of May 19 to May 27, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, David R. Gervino, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

Barry, Butler, Carter, Howell, New Madrid, Ripley, Scott, Shannon, Stoddard, and Texas Counties for Individual Assistance.

Barry, Bollinger, Butler, Carter, Howell, Madison, McDonald, New Madrid, Oregon, Reynolds, Ripley, Scott, Shannon, Stoddard, and Texas Counties for Public Assistance.

All areas within the State of Missouri are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20488 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3608–EM; Docket ID FEMA–2024–0001]

North Carolina; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA–3608–EM), dated August 6, 2024, and related determinations.

DATES: This change occurred on August 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, E. Craig Levy Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Rodriqus L. McAllister as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20446 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3608–EM; Docket ID FEMA–2024–0001]

North Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North

Carolina (FEMA–3608–EM), dated August 6, 2024, and related determinations.

DATES: The declaration was issued August 6, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 6, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of North Carolina resulting from Tropical Storm Debby beginning on August 5, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of North Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas and emergency protective measures (Category B), limited to direct Federal assistance in the other designated areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Rodriqus L. McAllister, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of North Carolina have been designated as adversely affected by this declared emergency:

Alamance, Anson, Beaufort, Bertie, Bladen, Brunswick, Carteret, Caswell, Chatham, Columbus, Craven, Cumberland, Davidson, Duplin, Durham, Edgecombe, Forsyth, Franklin, Granville, Greene, Guilford, Halifax, Harnett, Hoke, Johnston, Jones, Lee, Lenoir, Martin, Montgomery, Moore, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pender, Person, Pitt, Randolph, Richmond, Robeson, Rockingham, Sampson, Scotland, Vance, Wake, Warren, Wayne, and Wilson Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Camden, Chowan, Currituck, Dare, Davie, Gates, Hertford, Hyde, Pasquotank, Perquimans, Stokes, Surry, Tyrrell, Washington, and Yadkin Counties for emergency protective measures (Category B), limited to direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20444 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4711–DR; Docket ID FEMA–2024–0001]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4711–DR), dated May 9, 2023, and related determinations.

DATES: This change occurred on August 16, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and

Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20458 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4797–DR; Docket ID FEMA–2024–0001]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4797–DR), dated June 28, 2024, and related determinations.

DATES: This amendment was issued August 21, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 28, 2024.

Brown, Martin, McLeod, Redwood, and Renville Counties for Public Assistance. Itasca, Mower, and Nicollet Counties for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20505 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4805–DR; Docket ID FEMA–2024–0001]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4805–DR), dated July 23, 2024, and related determinations.

DATES: The declaration was issued July 23, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 23, 2024, the President issued a major

disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico resulting from severe storms, flooding, landslides, and mudslides during the period of April 29 to May 10, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert Little III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this major disaster:

Adjuntas, Guánica, Lajas, Las Marías, Luquillo, Maricao, Naranjito, Orocovis, Sabana Grande, San Sebastián, Toa Alta, Utuado, and Yauco Municipalities for Public Assistance.

All areas within the Commonwealth of Puerto Rico are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20511 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4630–DR; Docket ID FEMA–2024–0001]

Kentucky; Amendment No. 13 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4630–DR), dated December 12, 2021, and related determinations.

DATES: This change occurred on August 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20455 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4806–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4806–DR), dated August 10, 2024, and related determinations.

DATES: This amendment was issued August 28, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 10, 2024.

Alachua and Jefferson Counties for Individual Assistance.

Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Madison, Manatee, Sarasota, Suwannee, and Taylor Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

Baker, Charlotte, Jefferson, Leon, Union, and Wakulla Counties for Public Assistance, including direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—

Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20494 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4797–DR; Docket ID FEMA–2024–0001]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–4797–DR), dated June 28, 2024, and related determinations.

DATES: This amendment was issued August 27, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 28, 2024.

Houston and Sibley Counties for Public Assistance

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20498 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4795–DR; Docket ID FEMA–2024–0001]

New Mexico; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4795–DR), dated June 20, 2024, and related determinations.

DATES: This amendment was issued August 21, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 20, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20497 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-3611-EM; Docket ID FEMA-2024-0001]

Virgin Islands; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the territory of the U.S. Virgin Islands (FEMA-3611-EM), dated August 18, 2024, and related determinations.

DATES: This change occurred on August 18, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Christopher W. Allen, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Lai Sun Yee as Federal Coordinating Officer for this emergency.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-20453 Filed 9-10-24; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-4798-DR; Docket ID FEMA-2024-0001]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA-4798-DR), dated July 9, 2024, and related determinations.

DATES: This amendment was issued August 21, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include permanent work under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 9, 2024.

Austin, Brazoria, Harris, Jasper, Liberty, Matagorda, Montgomery, San Jacinto, and Wharton Counties for permanent work [Categories C-G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

Colorado County for permanent work [Categories C-G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-20510 Filed 9-10-24; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-3608-EM; Docket ID FEMA-2024-0001]

North Carolina; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA-3608-EM), dated August 6, 2024, and related determinations.

DATES: This amendment was issued August 26, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646-2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 19, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024-20447 Filed 9-10-24; 8:45 am]

BILLING CODE 9111-23-P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4804–
DR; Docket ID FEMA–2024–0001]

**Kentucky; Amendment No. 3 to Notice
of a Major Disaster Declaration**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4804–DR), dated July 23, 2024, and related determinations.

DATES: This change occurred on August 16, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mary Hernandez-Marrero, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of E. Craig Levy Sr. as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20502 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4810–
DR; Docket ID FEMA–2024–0001]

**Vermont; Amendment No. 1 to Notice
of a Major Disaster Declaration**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–4810–DR), dated August 20, 2024, and related determinations.

DATE: This amendment was issued August 22, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 20, 2024.

Orange County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20484 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4798–
DR; Docket ID FEMA–2024–0001]

**Texas; Amendment No. 3 to Notice of
a Major Disaster Declaration**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4798–DR), dated July 9, 2024, and related determinations.

DATES: This amendment was issued August 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 9, 2024.

Austin, Bowie, Shelby, Trinity, and Waller Counties for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20499 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4804–
DR; Docket ID FEMA–2024–0001]

**Kentucky; Amendment No. 2 to Notice
of a Major Disaster Declaration**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4804–DR), dated July 23, 2024, and related determinations.

DATES: This amendment was issued August 21, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 23, 2024.

Bell County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20483 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Internal Agency Docket No. FEMA–4801–
DR; Docket ID FEMA–2024–0001]

**Montana; Major Disaster and Related
Determinations**

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–4801–DR), dated July 18, 2024, and related determinations.

DATES: The declaration was issued July 18, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 18, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Montana resulting from a severe winter storm and flooding during the period of May 6 to May 9, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Edwin J. Martin, of FEMA is appointed to act as the Federal

Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Blaine, Chouteau, Fergus, Hill, Judith Basin, Petroleum, Pondera, Teton, Toole, and Wheatland Counties and the Rocky Boy’s Indian Reservation and the Fort Belknap Indian Community for Public Assistance.

All areas within the State of Montana are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20487 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

**DEPARTMENT OF HOMELAND
SECURITY****Federal Emergency Management
Agency**

[Docket ID FEMA–2024–0002; Internal
Agency Docket No. FEMA–B–2459]

**Proposed Flood Hazard
Determinations**

AGENCY: Federal Emergency
Management Agency, Department of
Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the

Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before December 10, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison.

You may submit comments, identified by Docket No. FEMA-B-2459, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646-7659, or (email) patrick.sacbibit@fema.dhs.gov; or visit the FEMA Mapping and Insurance

eXchange (FMIX) online at https://www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution

process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at https://www.floodsrp.org/pdfs/srp_overview.pdf.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location <https://hazards.fema.gov/femaportal/prelimdownload> and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at <https://msc.fema.gov> for comparison. (Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Wabasha County, Minnesota and Incorporated Areas	
Project: 12-05-2135S Preliminary Date: April 25, 2024	
City of Elgin	City Hall, 170 East Main Street, Elgin, MN 55932.
City of Hammond	City Hall, 320 Center Street East, Hammond, MN 55991.
City of Kellogg	City Office, 350 East Belvidere Avenue, Kellogg, MN 55945.
City of Lake City	City Hall, Building and Planning Department, 205 West Center Street, Lake City, MN 55041.
City of Mazeppa	City Hall, 121 Maple Street Northeast, Mazeppa, MN 55956.
City of Millville	City Hall, 400 Division Street, Millville, MN 55957.
City of Minneiska	Minneiska Clerk's Office, 56683 116th Ave, Minneiska, MN 55910.
City of Wabasha	City Hall, 900 Hiawatha Drive East, Wabasha, MN 55981.
City of Zumbro Falls	City Hall, 344 Highway 60, Zumbro Falls, MN 55991.
Unincorporated Areas of Wabasha County	Wabasha County Recorder's Office, 625 Jefferson Avenue, Wabasha, MN 55981.
Southampton County, Virginia and Incorporated Areas	
Project: 20-03-0038S Preliminary Date: August 15, 2023 and September 29, 2023	
Town of Boykins	Town Hall, 18206 Virginia Avenue, Boykins, VA 23827.
Town of Branchville	Town Hall, 15310 Broad Street, Branchville, VA 23828.
Town of Courtland	Town Office, 22219 Meherrin Road, Courtland, VA 23837.
Town of Newsoms	Town Office, 29056 Everett Street, Newsoms, VA 23874.

Community	Community map repository address
Unincorporated Areas of Southampton County	Southampton County Administrator's Office, 26022 Administration Center Drive, Courtland, VA 23837.

[FR Doc. 2024–20523 Filed 9–10–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3606–EM; Docket ID FEMA–2024–0001]

South Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of South Carolina (FEMA–3606–EM), dated August 5, 2024, and related determinations.

DATES: The declaration was issued August 5, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 5, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of South Carolina resulting from Hurricane Debby beginning on August 4, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of South Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas and emergency

protective measures (Category B), limited to direct Federal assistance in the other designated areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Brett H. Howard, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of South Carolina have been designated as adversely affected by this declared emergency:

Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Chesterfield, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lancaster, Lee, Lexington, McCormick, Marion, Marlboro, Newberry, Orangeburg, Richland, Saluda, Sumter, and Williamsburg Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Abbeville, Anderson, Cherokee, Chester, Greenville, Greenwood, Laurens, Oconee, Pickens, Spartanburg, Union, and York Counties for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20441 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3609–EM; Docket ID FEMA–2024–0001]

Vermont; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Vermont (FEMA–3609–EM), dated August 8, 2024, and related determinations.

DATES: This amendment was issued August 14, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 10, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20449 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3609–EM; Docket ID FEMA–2024–0001]

Vermont; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Vermont (FEMA–3609–EM), dated August 8, 2024, and related determinations.

DATES: The declaration was issued August 8, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 8, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Vermont resulting from Tropical Depression Debby beginning on August 8, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Vermont.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas and emergency protective measures (Category B), limited to direct Federal assistance in the other designated areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, William F. Roy, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Vermont have been designated as adversely affected by this declared emergency:

Caledonia, Essex, Orange, and Windsor Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support.

Addison, Bennington, Chittenden, Franklin, Grand Isle, Lamoille, Orleans, Rutland, Washington, and Windham Counties for emergency protective measures (Category B), limited to direct federal assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidential Declared Disaster Areas; 97.049, Presidential Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidential Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20448 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3607–EM; Docket ID FEMA–2024–0001]

Georgia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Georgia (FEMA–3607–EM), dated August 5, 2024, and related determinations.

DATES: The declaration was issued August 5, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 5, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Georgia resulting from Hurricane Debby beginning on August 4, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Georgia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in the designated areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Kevin A. Wallace, Sr., of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Georgia have been designated as adversely affected by this declared emergency:

Appling, Atkinson, Bacon, Ben Hill, Berrien, Brantley, Brooks, Bryan, Bulloch, Burke, Camden, Candler, Charlton, Chatham, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dodge, Echols, Effingham, Emanuel, Evans, Glynn, Grady, Irwin, Jeff Davis, Jefferson, Jenkins, Johnson, Lanier, Laurens, Liberty, Long, Lowndes, McIntosh, Mitchell, Montgomery, Pierce, Richmond, Screven, Tattnall, Telfair, Thomas, Tift, Toombs, Treutlen, Turner, Ware, Wayne, Wheeler, Wilcox, and Worth Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20442 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3611–EM; Docket ID FEMA–2024–0001]

Virgin Islands; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the territory of the U.S. Virgin Islands (FEMA–3611–EM), dated August 18, 2024, and related determinations.

DATES: This amendment was issued August 26, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 16, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20454 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4802–DR; Docket ID FEMA–2024–0001]

Chickasaw Nation; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Chickasaw Nation (FEMA–4802–DR), dated July 23, 2024, and related determinations.

DATES: The declaration was issued July 23, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 23, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage to the lands associated with the Chickasaw Nation resulting from severe storms during the period of March 14 to March 15, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists for the Chickasaw Nation.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation for the Chickasaw Nation. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Maoana N. Ngwira, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas have been designated as adversely affected by this major disaster:

Chickasaw Nation for Public Assistance.

The Chickasaw Nation is eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20506 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3605–
EM; Docket ID FEMA–2024–0001]**

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3605–EM), dated August 3, 2024, and related determinations.

DATES: The declaration was issued August 3, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 3, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Florida resulting from Tropical Storm Debby beginning on August 1, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the State of Florida.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support in selected areas and emergency protective measures (Category B), limited to direct Federal assistance in the other designated areas.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, John E. Brogan, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Florida have been designated as adversely affected by this declared emergency:

Alachua, Baker, Charlotte, Citrus, Clay, Collier, Columbia, Dixie, Duval, Franklin, Gilchrist, Gulf, Hamilton, Hendry, Hernando, Hillsborough, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Monroe, Nassau, Osceola, Pasco, Pinellas, Putnam, Sarasota, Sumter, Suwannee, Taylor, Union, and Wakulla Counties for emergency protective measures (Category B), limited to direct Federal assistance and reimbursement for mass care including evacuation and shelter support under the Public Assistance program.

Bay, Bradford, Brevard, Calhoun, DeSoto, Escambia, Flagler, Gadsden, Glades, Hardee, Highlands, Holmes, Jackson, Okaloosa, Okeechobee, Orange, Polk, Santa Rosa, Seminole, St. Johns, Volusia, Walton, and Washington Counties for emergency protective measures (Category B), limited to direct Federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20440 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4796–
DR; Docket ID FEMA–2024–0001]**

Iowa; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–4796–DR), dated June 24, 2024, and related determinations.

DATES: This amendment was issued August 9, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 24, 2024.

Emmet County for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

Des Moines, Floyd, Howard, Kossuth, and Mitchell Counties for Public Assistance.

Pottawattamie County for Public Assistance (already designated for Individual Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,
*Administrator, Federal Emergency
Management Agency.*

[FR Doc. 2024–20491 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–3610–EM; Docket ID FEMA–2024–0001]

Puerto Rico; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the Commonwealth of Puerto Rico (FEMA–3610–EM), dated August 13, 2024, and related determinations.

DATES: This amendment was issued August 26, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 16, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20451 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4807–DR; Docket ID FEMA–2024–0001]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4807–DR), dated August 15, 2024, and related determinations.

DATE: The declaration was issued August 15, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 15, 2024, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in the State of South Dakota resulting from severe storms, straight-line winds, and flooding during the period of June 16 to July 8, 2024, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Edwin J. Martin, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Davison, Lincoln, Turner, and Union Counties for Individual Assistance.

Aurora, Bennett, Bon Homme, Brule, Buffalo, Charles Mix, Clay, Davison, Douglas, Gregory, Hand, Hanson, Hutchinson, Jackson, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Tripp, Turner, Union, and Yankton Counties for Public Assistance.

All areas within the State of South Dakota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20503 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–4796–DR; Docket ID FEMA–2024–0001]

Iowa; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–4796–DR), dated June 24, 2024, and related determinations.

DATE: This amendment was issued August 2, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major

disaster by the President in his declaration of June 24, 2024.

Harrison, Monona, Pocahontas, Winneshiek, and Wright Counties for Public Assistance.

Lyon and Osceola Counties for permanent work [Categories C–G] (already designated for Individual Assistance and assistance for debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20509 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3611–EM; Docket ID FEMA–2024–0001]

Virgin Islands; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the territory of the U.S. Virgin Islands (FEMA–3611–EM), dated August 18, 2024, and related determinations.

DATES: The declaration was issued August 18, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 18, 2024, the President issued an emergency declaration under the

authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the territory of the U.S. Virgin Islands resulting from Tropical Storm Ernesto beginning on August 13, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the territory of the U.S. Virgin Islands.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Lai Sun Yee, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the territory of the U.S. Virgin Islands have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program for the islands of St. Croix, St. John, St. Thomas, and Water Island.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20452 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4740–DR; Docket ID FEMA–2024–0001]

New Hampshire; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4740–DR), dated September 14, 2023, and related determinations.

DATES: This change occurred on August 12, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William F. Roy as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20459 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4806–DR; Docket ID FEMA–2024–0001]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–4806–DR), dated August 10, 2024, and related determinations.

DATES: This amendment was issued August 20, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 10, 2024.

Madison County for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20489 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4787–DR; Docket ID FEMA–2024–0001]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–4787–DR), dated May 24, 2024, and related determinations.

DATES: This amendment was issued August 16, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 24, 2024.

Boone County for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20485 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4795–DR; Docket ID FEMA–2024–0001]

New Mexico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Mexico (FEMA–4795–DR), dated June 20, 2024, and related determinations.

DATES: This change occurred on July 31, 2024.

FOR FURTHER INFORMATION CONTACT:

Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. McPherson, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Robert Patterson, Jr., as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20496 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3607–EM; Docket ID FEMA–2024–0001]

Georgia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Georgia (FEMA–3607–EM), dated August 5, 2024, and related determinations.

DATES: This amendment was issued August 26, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective August 20, 2024.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20443 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3610–EM; Docket ID FEMA–2024–0001]

Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA–3610–EM), dated August 13, 2024, and related determinations.

DATES: The declaration was issued August 13, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 13, 2024, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the Commonwealth of Puerto Rico resulting from Tropical Storm Ernesto beginning on August 13, 2024, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (“the Stafford Act”). Therefore, I declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved

assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Robert Little III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program for all 78 municipalities.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20450 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4799–DR; Docket ID FEMA–2024–0001]

New Hampshire; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4799–DR), dated July 10, 2024, and related determinations.

DATE: This change occurred on August 12, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency

Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William F. Roy as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20482 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3608–EM; Docket ID FEMA–2024–0001]

North Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA–3608–EM), dated August 6, 2024, and related determinations.

DATES: This amendment was issued August 8, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the

State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 6, 2024.

Allegheny, Cabarrus, Iredell, Mecklenburg, Rowan, Stanly, Union, and Wilkes Counties for emergency protective measures (Category B), limited to direct federal assistance and reimbursement for mass care, including evacuation and shelter support, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20445 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4771–DR; Docket ID FEMA–2024–0001]

New Hampshire; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of New Hampshire (FEMA–4771–DR), dated April 19, 2024, and related determinations.

DATES: This change occurred on August 12, 2024.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the

Administrator, under Executive Order 12148, as amended, Robert V. Fogel, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of William F. Roy as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–20508 Filed 9–10–24; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council; Meeting

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will hold an in-person public meeting with a virtual option on Tuesday, October 22, 2024, and Wednesday, October 23, 2024. The meeting will be open to the public in-person and via a Microsoft Teams Video Communications link.

DATES: The TMAC will meet on Tuesday, October 22, 2024 and Wednesday, October 23, 2024, from 8:00 a.m. to 5:00 p.m. Eastern Time (ET) each day. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in-person at 400 C St. SW, Washington, DC 20472 and virtually using the following Microsoft Teams Video Communications link (Tuesday Link: <https://tinyurl.com/2avajy6u>;

Wednesday Link: <https://tinyurl.com/2avajy6u>). Members of the public who wish to attend the in-person or virtual meeting must register in advance by sending an email to FEMA-TMAC@fema.dhs.gov (Attn: Brian Koper) by 5:00 p.m. ET on October 18, 2024.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the **SUPPLEMENTARY INFORMATION** caption below. Associated meeting materials will be available upon request on Thursday, October 17, 2024. To receive a copy of any relevant materials, please send the request to: FEMA-TMAC@fema.dhs.gov (Attn: Brian Koper). Written comments to be considered by the committee at the time of the meeting must be submitted and received by Friday, October 18, 2024, 5:00 p.m. ET identified by Docket ID FEMA-2014-0022, and submitted by the following methods:

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

- *Email*: Address the email to FEMA-TMAC@fema.dhs.gov. Include the docket number in the subject line of the message. Include name and contact information in the body of the email.

Instructions: All submissions received must include the words “Federal Emergency Management Agency” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided. You may wish to review the Privacy and Security Notice via a link on the homepage of <http://www.regulations.gov>.

Docket: For docket access to read background documents or comments received by the TMAC, go to <http://www.regulations.gov> and search for the Docket ID FEMA-2014-0022.

A public comment period will be held on Tuesday, October 22, 2024, from 3:30 p.m. to 4:00 p.m. ET and Wednesday, October 23, 2024, from 11:30 a.m. to 12:00 p.m. ET. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by Friday, October 18, 2024, 5:00 p.m. ET. Please be prepared to submit a written version of your public comment.

FEMA is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation to fully participate due to a disability,

please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** caption as soon as possible.

FOR FURTHER INFORMATION CONTACT: Brian Koper, Designated Federal Officer for the TMAC, FEMA, 400 C St. SW, Washington, DC 20472, telephone 202-646-3085, and email brian.koper@fema.dhs.gov. The TMAC website is: <https://www.fema.gov/flood-maps/guidance-partners/technical-mapping-advisory-council>.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act*, Public Law 117-286, 5 U.S.C. ch. 10.

In accordance with the *Biggert-Waters Flood Insurance Reform Act of 2012*, the TMAC makes recommendations to the FEMA Administrator on: (1) how to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) a description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Agenda: The purpose of this meeting is for the TMAC members to discuss and vote on the content of the 2024 TMAC Annual Report. Any related materials will be available upon request prior to the meeting to provide the public with an opportunity to review the materials. The full agenda and related meeting materials will be available upon request by Thursday, October 17, 2024. To receive a copy of any relevant materials, please send the request to: [\[TMAC@fema.dhs.gov\]\(mailto:TMAC@fema.dhs.gov\) \(Attn: Brian Koper\).](mailto:FEMA-</p>
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Nicholas A. Shufro,

Assistant Administrator (Acting), Risk Analysis, Planning & Information Directorate Resilience, Federal Emergency Management Agency.

[FR Doc. 2024-20538 Filed 9-10-24; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Crew Member Self-Defense Training—Registration and Evaluation

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 1652-0028, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves requesting information to verify the employment status and eligibility for participation in advanced self-defense training provided by TSA.

DATES: Send your comments by October 11, 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 May 21, 2024, 89 FR 44696.

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: Crew Member Self-Defense Training—Registration and Evaluation.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0028.

Form(s): “Web enabled Registration Form”; “Injury Waiver Form”; “Attendance Roster”; “Electronic Feedback Tab”.

Affected Public: Flight and cabin crew members on scheduled passenger and public charter passenger, and cargo flights.

Abstract: TSA is seeking an extension of the ICR, currently approved under OMB control number 1652–0028, to continue compliance with a statutory mandate. Under 49 U.S.C. 44918(b), TSA is required to develop and provide a voluntary advanced self-defense training program for flight and cabin crew members of U.S. air carriers providing scheduled passenger air transportation.¹

TSA currently collects biographical information from crew members to confirm their eligibility to participate in this training program and to confirm their attendance. TSA confirms the eligibility of the participant by

contacting the participant's employer, and confirms attendance by comparing the registration information against a sign-in sheet provided in the classroom. In addition, TSA asks each crew member to complete an Injury Waiver Form during the registration process, or before the training is conducted. Finally, TSA asks trainees to complete a voluntary evaluation of the training upon completion of the course.

Number of Respondents: 795.

Estimated Annual Burden Hours: An estimated 61.17 hours annually.

Dated: September 6, 2024.

Christina A. Walsh,

*TSA Paperwork Reduction Act Officer,
Information Technology.*

[FR Doc. 2024–20533 Filed 9–10–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0008]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Biographic Information (for Deferred Action)

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until October 11, 2024.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS–2005–0024. All submissions received must include the OMB Control Number 1615–0008 in the body of the letter, the agency name and Docket ID USCIS–2005–0024.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division,

Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on April 23, 2024, at 89 FR 30388, allowing for a 60-day public comment period. USCIS received six comments in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS–2005–0024 in the search box. Comments must be submitted in English, or an English translation must be provided. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

¹ TSA also offers this training to cargo and private and public charter flight crew members.

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Biographic Information (for Deferred Action).

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G-325A; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Individuals or households. USCIS uses Form G-325A to collect biographic information from individuals requesting deferred action for certain military service members and their family members, or for non-military deferred action (other than deferred action based on Deferred Action for Childhood Arrivals (DACA), Violence Against Women Act, A-3, G-5 nonimmigrants, and T and U nonimmigrant visas).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G-325A is 7,500 and the estimated hour burden per response is 2.39 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 17,925 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$187,500.

Dated: September 6, 2024.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2024-20557 Filed 9-10-24; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6486-N-01]

Modifying HUD's Elevated Blood Lead Level Threshold for Children Under Age 6 Who are Living in Certain HUD-Assisted Target Housing Covered by the Lead Safe Housing Rule; Notice for Comment

AGENCY: Office of Lead Hazard Control and Healthy Homes, Department of Housing and Urban Development, HUD.

ACTION: Notice for comment.

SUMMARY: This notice for comment seeks public input regarding HUD's intention to revise the elevated blood lead level (EBLL) threshold in HUD's requirements for assisted housing. HUD intends to revise its EBLL threshold to 3.5 micrograms of lead per deciliter ($\mu\text{g}/\text{dL}$) of blood for a child under the age of 6, consistent with the Centers for Disease Control and Prevention's (CDC) current blood lead reference value (BLRV) of 3.5 ($\mu\text{g}/\text{dL}$) of blood for a child under the age of 6. The CDC uses its BLRV for encouraging actions such as environmental investigations of homes to identify potential sources of lead. When HUD last amended its EBLL threshold in 2017, CDC's BLRV for children under the age of 6 was 5 $\mu\text{g}/\text{dL}$, the level HUD uses as its current EBLL threshold.

DATES: *Comment Due Date:* October 11, 2024.

ADDRESSES: Interested persons are invited to submit comments responsive to this notice for comment. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Comments may be submitted electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make comments immediately available to the public. Comments submitted electronically through www.regulations.gov can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of

General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410-0500.

Public Inspection of Public Comments. All properly submitted comments and communications will be available for public inspection and copying between 8 a.m. and 5 p.m. eastern time weekdays at the above address. Due to security measures at the HUD Headquarters building, you must schedule an appointment in advance to review the public comments by calling the Regulations Division at 202-708-3055 (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>.

FOR FURTHER INFORMATION CONTACT: Warren Friedman, Office of Lead Hazard Control and Healthy Homes, Department of Housing and Urban Development, 451 7th Street SW, Room 8236, Washington, DC 20410-3000, telephone 202-402-7698 (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>.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Lead Safe Housing Rule

On September 15, 1999, HUD published a final rule entitled "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance."¹ HUD's 1999 final rule, including revisions made through subsequent rulemakings since the rule's original publication in 1999, is referred to throughout this notice for comment as the "Lead Safe Housing Rule." The Lead Safe Housing Rule's requirements are codified at 24 CFR part 35. Its purpose is to implement the Lead-Based Paint Poisoning Prevention Act, as amended,² and the Residential Lead-Based Paint Hazard

¹ Available at 64 FR 50140.

² 42 U.S.C. 4821 *et seq.*

Reduction Act of 1992³ and specifically, “to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children.”⁴

Under HUD’s Lead Safe Housing Rule, when a child under age 6 residing in certain housing built before 1978—*i.e.*, “target housing”⁵—that is HUD-assisted is identified as having an elevated blood lead level, the “designated party”—the property owner or other entity (*e.g.*, Federal agency, State, local government, public housing agency, Indian Tribe, tribally designated housing entity, sponsor) responsible for complying with applicable requirements of the Lead Safe Housing Rule for that assistance⁶—is required to undertake certain actions. These required actions are generally the same for each of the four applicable Lead Safe Housing Rule subparts in 24 CFR part 35 regarding HUD assistance:

- Subpart H, Project-Based Assistance,
- Subpart I, HUD-Owned and Mortgagee-in-Possession Multifamily Property,
- Subpart L, Public Housing Programs, and
- Subpart M, Tenant-Based Rental Assistance.

Additionally, there are slightly narrower requirements in subpart D, covering Project-Based Assistance Provided by a Federal Agency Other Than HUD, under which other agencies do not report on the case to HUD.

During an environmental investigation, lead professionals (*i.e.*, certified lead risk assessors working for a certified lead risk assessment firm on behalf of the designated party, or

professionals from the local public health department) check the child’s environment for possible causes of lead exposure and recommend ways to prevent further lead exposure. If the environmental investigation identifies any lead-based paint hazards in the HUD-assisted housing unit of the child, the building’s other HUD-assisted units where a child under age 6 resides are also required to have a risk assessment conducted, and a designated party associated with the assistance must arrange for the hazards to be controlled in accordance with HUD and Environmental Protection Agency (EPA) requirements, as applicable, on a schedule specified in the Lead Safe Housing Rule.⁷

B. CDC’s Blood Level Reference Value and HUD’s Elevated Blood Lead Level Threshold

Through mid-2017, HUD defined “environmental intervention blood lead level” (EIBLL) as “a confirmed concentration of lead in whole blood equal to or greater than 20 ug/dL for a single test or 15–19 ug/dL in two tests taken at least 3 months apart.”⁸ HUD used the EIBLL definition to specify when environmental intervention was required in HUD-assisted target housing.

In 2017, HUD amended the Lead Safe Housing Rule principally to address HUD’s requirements relating to responding to elevated blood lead levels.⁹ Through the amendment, HUD replaced the EIBLL definition with a definition of “elevated blood lead level” in children under the age 6, in accordance with CDC guidance at the time.¹⁰ As noted in HUD’s 2017 rule:

CDC’s “reference range value” [also called “reference value”] method for defining EBLs is based on the blood lead level equalled or exceeded by 2.5 percent of U.S. children aged 1–5 years as determined by CDC’s most recent National Health and Nutritional Examination Survey. Currently [*i.e.*, in 2017], CDC’s reference range value is 5 µg/dL (5 micrograms of lead per deciliter of blood).¹¹

CDC introduced its blood lead reference value method in 2012, based on the CDC’s Advisory Committee on Childhood Lead Poisoning Prevention

(ACCLPP),¹² recommending in January 2012:

that a reference value based on the 97.5th percentile of the [National Health and Nutrition Examination Survey] generated [blood lead level (BLL)] distribution in children 1–5 years old (currently 5 µg/dL) be used to identify children with elevated BLL.¹³

In its June 2012 response, CDC accepted the ACCLPP recommendations that the BLRV method be used and that the BLRV be set at 5 µg/dL for children under the age of 6, based on the two then-most recent National Health and Nutritional Examination Surveys from 2009–2010 and 2011–2012.¹⁴

As the CDC explains, its BLRV helps to identify children with higher levels of lead in their blood compared to most children. The current BLRV is based on the 97.5th percentile of the blood lead values among U.S. children ages 1–5 years from 2015–2016 and 2017–2018 National Health and Nutrition Examination Survey (NHANES) cycles. Children with blood lead levels at or above the BLRV represent those at the top 2.5 percent with the highest blood lead levels. The CDC reanalyzes blood lead data approximately every four years using the most recent two NHANES cycles to determine whether it should update its BLRV.¹⁵

With the distribution of blood lead levels of children under age 6 consistently dropping for decades,¹⁶ including in recent years,¹⁷ the fraction

¹² The ACCLPP was formed under the Federal Advisory Committee Act, 5 U.S.C. 1001, which provides a mechanism for experts and stakeholders to participate in the executive branch decision-making process.

¹³ ACCLPP, Recommendations of the Advisory Committee for Childhood Lead Poisoning Prevention (ACCLPP) “Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention” (Jan. 4, 2012), <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/nceh/lead/advisory/acclpp.htm>.

¹⁴ CDC, CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP) Recommendations in “Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention” (June 7, 2012), <https://archive.cdc.gov/#/details?url=https://www.cdc.gov/nceh/lead/advisory/acclpp.htm>.

¹⁵ See CDC, Childhood Lead Poisoning Prevention, About the Data: Blood Lead Surveillance, Blood lead reference value (April 17, 2024), https://www.cdc.gov/lead-prevention/php/data/blood-lead-surveillance.html#cdc_data_description_what_the_data_includes-blood-lead-reference-value.

¹⁶ See, *e.g.*, Brown MJ and Falk H. Toolkit for Establishing Laws to Control the Use of Lead Paint. Module C.iii. Conducting blood lead prevalence studies, Global Alliance to Eliminate Lead Paint, slide 8 (2017), https://wedocs.unep.org/bitstream/handle/20.500.11822/21470/Module%20Ciii%20Blood%20Lead%20Prevalence%20Studies_Final%20%20July%2017.pdf.

¹⁷ See, *e.g.*, Tsoi M-F, Cheung C-L, Cheung TT, Cheung BM, Continual Decrease in Blood Lead

Continued

³ 42 U.S.C. 4851 *et seq.*; see also 24 CFR 35.100(a).

⁴ 64 FR 50140 (Sept. 15, 1999).

⁵ Most housing built before 1978 is considered “target housing,” which is the focus of the Lead Safe Housing Rule and other HUD and Environmental Protection Agency rules and programs on lead safety in housing. The Lead Safe Housing Rule defines “target housing,” in part, as “any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling.” 24 CFR 35.110, target housing. HUD is preparing to amend the definition of “target housing” in 24 CFR part 35 to reflect the slight expansion of the scope of the term by the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, enacted May 5, 2017) to include the small number of pre-1978 zero-bedroom dwellings in which a child under age 6 resides or is expected to reside. See the Office of Information and Regulatory Affairs, Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions, HUD Regulatory Identification Number 2501–AE03, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=2501-AE03>.

⁶ See 24 CFR 35.110, designated party.

⁷ For additional information on required actions where a child has an EBL, see 24 CFR 35.325 (subpart D); 24 CFR 35.730; (subpart H), 24 CFR 35.830 (subpart I); 24 CFR 35.1130 (subpart L); and 24 CFR 35.1225 (subpart M).

⁸ 24 CFR 35.110 (Jan. 3, 2017).

⁹ See Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels, 82 FR 4151 (Jan. 13, 2017).

¹⁰ 24 CFR 35.110, elevated blood lead level.

¹¹ 82 FR 4152, footnote 6 (Jan. 13, 2017).

of children with blood lead levels at or above 5 µg/dL has decreased. Based on HUD's survey research¹⁸ and lead hazard reduction grant data analysis research,¹⁹ it is clear that assisted housing has distributions of dust-lead levels well below the national distribution of dust-lead levels both during routine occupancy and after lead hazard reduction activities. HUD's survey research also indicates that HUD-assisted housing has a lower prevalence of lead-based paint hazards than unassisted housing. Consistent with those findings, HUD-CDC data analysis research indicates that the distribution of blood lead levels in children under age 6 residing in HUD-assisted housing is significantly lower than the distribution of blood lead levels in socio-demographically matched children in unassisted housing.²⁰

On May 14, 2021, the Department of Health and Human Services' Lead Exposure and Prevention Advisory Committee (LEPAC)²¹ voted to recommend that CDC update its BLRV for children under the age of 6 from 5 µg/dL to 3.5 µg/dL based on CDC data from the 2015–2016 and 2017–2018 NHANES cycles.²² CDC accepted

LEPAC's recommendation and publicized its implementation by creating and updating several web pages on its website.²³

C. HUD's Intention To Revise Its EBLL Threshold for Children Under the Age of 6

HUD intends to revise its EBLL threshold to 3.5 µg/dL of blood for a child under age 6, consistent with CDC's current BLRV of 3.5 µg/dL of blood for a child under age 6.²⁴ HUD's intended revision to its EBLL threshold would encourage healthcare providers and public health professionals to use the CDC-recommended follow-up actions that include arranging for an environmental investigation of the home to identify potential sources of lead.²⁵ The revision would require the environmental investigation by the designated party (unless the public health department has evaluated the home in regard to the child's EBLL case) when the child resides in certain HUD-assisted target housing covered by the Lead Safe Housing Rule.

When HUD's Lead Safe Housing Rule was last amended in 2017,²⁶ CDC guidance was to use 5 µg/dL as the BLRV threshold for children under the age of 6 when recommending an environmental investigation. HUD has used that level as the EBLL threshold for the Lead Safe Housing Rule since 2017. Given that CDC has now revised its BLRV to 3.5 µg/dL for children under the age of 6, HUD believes that it is appropriate to revise its EBLL threshold to be consistent with CDC's BLRV.

Conforming HUD's EBLL threshold for children under 6 to CDC's current BLRV would result in more environmental investigations of pre-1978 assisted housing units and more lead hazard control work being performed in those units than at present. The number of environmental investigations and lead hazard control activities would be comparable to the number at the time the EBLL was set in

2017, because the CDC guidance criterion for setting the BLRV—the blood lead level at or above which are the highest 2.5 percent of the national population of children under age 6 (formally, ages 1 to 5)—is the same. Because HUD already has overall safety and LSHR monitoring and response programs, the percentage of children under age 6 with EBLs in HUD-assisted housing is expected to remain lower than that national 2.5 percentage.

II. This Notice for Comment

Through this notice for comment, HUD is giving notice of, and opportunity for public comment on, as required by 24 CFR part 35,²⁷ HUD's intention to revise its elevated blood lead level threshold to 3.5 µg/dL of blood for a child under age 6.

HUD requests public input regarding HUD's intention to make the described update to its EBLL threshold under HUD's Lead Safe Housing Rule. HUD seeks public comment on whether HUD should adopt the CDC's 3.5 µg/dL BLRV to replace the EBLL 5 µg/dL threshold for children under the age of 6 currently used in HUD's Lead Safe Housing Rule. This adoption of a lower EBLL threshold would result in the percentage of HUD assisted pre-1978 housing units prompting environmental investigations to return to approximately the same percentage as in 2017.

III. Specific Information Requested

While HUD welcomes all comments relevant to HUD's intention to update the Lead Safe Housing Rule's EBLL threshold from 5 to 3.5 µg/dL of blood for a child under 6, consistent with CDC's recommendation, HUD is particularly interested in receiving input on the questions listed below. To assist commenters, HUD provides the following guidance and list of specific information requested.

- Please indicate in your written comments the area of interest and the topic number(s) below you are commenting on and provide specific information to illustrate your comments where possible.

- You do not need to address every topic and should focus on those where you have relevant expertise, experience, or data.

- To the extent possible, please cite any public data, peer-reviewed journal articles, and other publicly accessible information related to the topic or that supports your responses.

- If information or data is available, but is non-public, describe the

Level in Americans: United States National Health Nutrition and Examination Survey 1999–2014 (2016), *American Journal of Medicine* 129(11):1213–1218, <https://doi.org/10.1016/j.amjmed.2016.05.042>; Egan KB, Cornwell CR, Courtney JG, Ettinger AS, Blood Lead Levels in U.S. Children Ages 1–11 Years, 1976–2016 (2021), *Environmental Health Perspectives* 129(3):037003, <https://doi.org/10.1289/EHP793>.

¹⁸ See Jacobs DE, Clickner RP, Zhou JY, Viet SM, Marker DA, Rogers JW, Zeldin DC, Broene P, and Friedman W, The Prevalence of Lead-Based Paint Hazards in U.S. Housing (2002), *Environmental Health Perspectives* 110(10):A599–A606, <https://doi.org/10.1289/ehp.021100599>; Dewalt FG, Cox DC, O'Haver R, Salatin B, Holmes D, Ashley PJ, Pinzer EA, Friedman W, Marker D, Viet SM, and Fraser A, Prevalence of Lead Hazards and Soil Arsenic in U.S. Housing (2015), *Journal of Environmental Health* 78(5):22–29, <https://www.neha.org/node/6429>; HUD Office of Lead Hazard Control and Healthy Homes, *American Healthy Homes Survey II Lead Findings* (2021), www.hud.gov/sites/dfiles/HH/documents/AHHS_II_Lead_Findings_Report_Final_29oct21.pdf.

¹⁹ See, e.g., Cox, David and Gary Dewalt (2015), *Lead Hazard Control Clearance Survey: Final Report*. HUD, Office of Lead Hazard Control and Healthy Homes, https://www.hud.gov/sites/documents/ClearanceSurvey_24Oct15.pdf.

²⁰ See, e.g., Ahrens KA, Haley BA, Rossen LM, Lloyd PC, Aoki Y, Housing Assistance and Blood Lead Levels: Children in the United States, 2005–2012, *American Journal of Public Health* 106(11):2049–2056 (Nov. 1, 2016), <https://doi.org/10.2105/AJPH.2016.303432>.

²¹ For additional information on LEPAC, see CDC, *Childhood Lead Poisoning Prevention, Lead Advisory Committees*, <https://www.cdc.gov/lead-prevention/php/lead-advisory-committee/index.html>.

²² See CDC, *Childhood Lead Poisoning Prevention, Agenda and Minutes of Lead Exposure and Prevention Advisory Committee Meeting*, May 14, 2021, <https://www.cdc.gov/lead-prevention/>

<https://www.cdc.gov/lead-prevention/php/lead-advisory-committee/meeting-5-14-2021.html>.

²³ See, e.g., <https://www.cdc.gov/lead-prevention/about/index.html>; <https://www.cdc.gov/lead-prevention/php/data/blood-lead-surveillance.html>; <https://www.cdc.gov/lead-prevention/php/data/index.html>; <https://www.cdc.gov/lead-prevention/hcp/clinical-guidance/index.html>.

²⁴ For additional information, see CDC, *Childhood Lead Poisoning Prevention, About the Data: Blood Lead Surveillance*, <https://www.cdc.gov/lead-prevention/php/data/blood-lead-surveillance.html>.

²⁵ For additional information, see CDC, *Childhood Lead Poisoning Prevention, Recommended Actions Based on Blood Lead Level*, <https://www.cdc.gov/lead-prevention/hcp/clinical-guidance/index.html>.

²⁶ See 82 FR 4151 (Jan. 13, 2017).

²⁷ 24 CFR 35.110, elevated blood lead level.

information or data to the extent permissible, noting that it is non-public.

Because any responses received by HUD will be publicly available, responses should not include any personally identifiable information (other than identifying the submitter, unless the submitter wishes to submit anonymously, or identifying authors or editors of publicly available information) or confidential commercial information.

HUD thanks commenters in advance for their information and comments that will assist the Department in evaluating its current EBLL threshold and the appropriateness of HUD's intention to revise its EBLL threshold.

1. Considerations for Revising the Lead Safe Housing Rule's Elevated Blood Lead Level Threshold

a. Reasoning in this notice. Is the reasoning discussed throughout this notice for comment appropriate for determining to decrease the Lead Safe Housing Rule's EBLL threshold from 5 to 3.5 µg/dL of blood for children under 6? Is the justification reasonable and balanced?

b. Other considerations. Are there other considerations for determining the appropriate EBLL, and, if so, what are those considerations and how should they be addressed?

2. Compliance Period Following a Revision to the Lead Safe Housing Rules Elevated Blood Lead Level Threshold

If HUD revises its EBLL threshold under the Lead Safe Housing Rule by decreasing it to CDC's current BLRV, should HUD set a 6-month compliance period for requiring environmental interventions at the decreased EBLL threshold, as HUD did when it last decreased its Lead Safe Housing Rule blood lead level threshold in 2017, or should HUD set some other compliance period?

HUD recognizes that its clients conducting ongoing program activities in pre-1978 housing covered by the Lead Safe Housing Rule would need time to incorporate any revised EBLL threshold level requirements related to responding to cases of children with EBLs into their programs. As a result, HUD is considering setting a compliance date of 6 months after any revision to the EBLL threshold for requiring environmental intervention and related activities. Setting a delayed compliance period of 6 months would be intended to allow all covered parties—lead-based paint professionals, housing agencies, State, Tribal, and local government agencies, public and private residential property owners,

residential property management firms, and others—time to prepare for proper implementation of any revised requirements. HUD shares the public health concern that further delaying required compliance with a revised EBLL threshold may expose children under age 6 to higher lead levels for a longer period of time; however, HUD believes that setting a shorter compliance date, such as a 30-day compliance date, may be impractical because the organizational infrastructure necessary to implement a revised EBLL threshold will take time to put in place.

Matthew Ammon,

Director, Office of Lead Hazard Control and Healthy Homes.

[FR Doc. 2024-20532 Filed 9-10-24; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7084-N-05]

60-Day Notice of Proposed Information Collection: Record of Employee Interview; OMB Control No.: 2501-0009

AGENCY: Office of Field Policy and Management, 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 60 days of public comment.

DATES: *Comments Due Date:* November 12, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.regulations.gov. 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: Nathan A. Roush, Program Analyst, Office of Field Policy and Management, Department of Housing and Urban Development, 75 Ted Turner Dr. SW, Atlanta, GA 30303 or the number (678) 732-2250 this is not a toll-free number or email at Nathan.A.Roush@hud.gov for a copy of the proposed forms or other available information.

FOR FURTHER INFORMATION CONTACT:

Colette Pollards, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 402-3400 (this is not a toll-free number) or email: Colette.Pollard@hud.gov for copies of the proposed forms and other available information. HUD welcomes and is prepared to receive calls at the phone numbers above 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>.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Information Collection:
Record of Employee Interview.

OMB Control Number, if applicable:
2501-0009.

Description of the need for the information and proposed use:

All Federal agencies administering programs subject to Davis-Bacon wage provisions are required to enforce Federal Wage and reporting provisions in accordance with Department of Labor (DOL) regulations (29 CFR part 5, section 5.6 paragraphs (1)(2) and (a)(3), respectively).

HUD, State, and local agencies administering HUD-assisted programs must enforce Federal Wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include conducting interviews

with laborers and mechanics employed on HUD-assisted projects concerning their employment on covered projects. The HUD-11 and HUD-11-SP (Spanish version) are used to assist in the conducting of on-site interviews and to record the information provided by the respondent. The forms may be

supplemented with additional pages, as needed. Responses and the provision of supplemental information are voluntary on the part of respondents. (See HUD Handbook 1344.1 REV-3 [Federal Labor Standards Requirements in Housing and Urban Development Programs], sections 5-9, 5-10 (January 2023).)

Agency form numbers, if applicable:
HUD-11/ HUD-11-SP.
Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Frequency of response	Responses per annum	Total burden hours per response	Annual burden hours	Hourly cost per response	Total cost
HUD-11/11SP Respondent's Time	20,000	1.00	20,000	.25	5,000	\$23.69	\$118,450.00

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.
Christopher D. Taylor,
Director, Field Policy and Management.
[FR Doc. 2024-20571 Filed 9-10-24; 8:45 am]
BILLING CODE 4210-67-P

INTER-AMERICAN FOUNDATION

Privacy Act of 1974; System of Records

AGENCY: Inter-American Foundation.
ACTION: Notice of a new system of records.

SUMMARY: The Inter-American Foundation (IAF) proposes to add three new electronic systems of records: IAF/ FPPS (Federal Personnel and Payroll System) (IAF-01), IAF Salesforce CRM (Customer Relationship Management) (IAF-02), IAF GovGrants (IAF-03). This notice is required to meet the requirements of the Privacy Act to publish in the **Federal Register** a notice of the existence and character of records maintained by the agency.

DATES: This action will be effective without further notice on October 21, 2024 unless comments are received that would result in a contrary determination. Comments must be received by October 21, 2024.

ADDRESSES: Comments should include the system name the comments relate to and may be submitted electronically to PrivacyActRequests@iaf.gov or by mail to Chief Information Officer, Inter-American Foundation, 1331 Pennsylvania Ave. NW, Suite 1200, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dominic Bumbaca, Chief Information Security Officer, Inter-American Foundation, 1331 Pennsylvania Ave. NW, Suite 1200, Washington, DC 20004, at (202)-360-4530.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended, embodies fair information practice

principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals; these records are maintained in a "system of records," which refers to a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. In accordance with 5 U.S.C. 552a(r), the IAF has provided a report of these system of records to the Office of Management and Budget (OMB) and to Congress. The IAF is adding three new systems of records.

The Federal Personnel and Payroll System (FPPS) (IAF-01) is an online personnel and payroll system providing support to Federal agency customers through DOI's Interior Business Center (IBC). FPPS is customized to meet customer needs for creating and generating the full life cycle of personnel transactions. IAF uses FPPS to manage human resources and payroll functions; ensure proper payment for salary and benefits; track time worked, leave, or other absences for reporting and compliance purposes; and meet regulatory requirements. FPPS allows for immediate updates and edits of personnel and payroll data. IAF has contracted with DOI IBC for human resource services including the use of FPPS. This SORN covers only the Inter-American Foundation data held within FPPS and does not cover the data of any other agencies utilizing DOI IBC's services nor does it cover data belonging to DOI.

The IAF Salesforce CRM system (IAF-02) is used to manage relationships with potential or current contacts, beneficiaries, partners, donors, and

other civil society organizations. It supports the mission of the Agency by increasing transparency, improving outreach, communications, and collaboration efforts with our stakeholders, as well as employing sound, repeatable methodologies.

The IAF GovGrants system (IAF-03) will provide the agency a web-based full life-cycle grants management system. The system will maintain grant program information, notice of funding opportunities, agency award application package information, agency award agreement, and reporting information to meet compliance requirements with the Data Act and Foreign Assistance Act.

SYSTEM NAME AND NUMBER:
IAF/FPPS (Federal Personnel and Payroll System), IAF-01.

SECURITY CLASSIFICATION:
Unclassified.

SYSTEM LOCATION:
(1) The system is located and managed at U.S. Department of the Interior, Interior Business Center, Personnel and Payroll Systems Division, 7301 West Mansfield Ave., MS D-2400, Denver, CO 80235-2230.
(2) Temporary paper records are also located at the IAF Headquarters, located at 1331 Pennsylvania Avenue NW, Suite 1200, North Washington, DC 20004.

SYSTEM MANAGER:
Chief Information Officer (CIO), Inter-American Foundation, 1331 Pennsylvania Ave. NW #1200, Washington, DC 20004, (202)-360-4530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
5 U.S.C. 5101, *et seq.*, Government Organization and Employees; 31 U.S.C. 3512, *et seq.*, Executive Agency Accounting and Other Financial Management Reports and Plans; 31 U.S.C. 1101, *et seq.*, the Budget and Fiscal, Budget, and Program Information; 5 CFR part 293, subpart B, Personnel Records Subject to the Privacy Act; 5 CFR part 297, Privacy Procedures for Personnel Records;

Executive Order 9397 as amended by Executive Order 13478, relating to Federal agency use of Social Security numbers; and Public Law 101–576 (Nov. 15, 1990), the Chief Financial Officers (CFO) Act of 1990.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to manage personnel and payroll functions, to ensure proper payment for salary and benefits, track time and attendance, leave, and other absences for reporting and compliance purposes; and facilitate reporting requirements to other Federal agencies, including the Department of the Treasury and the Office of Personnel Management, for payroll, tax, and human capital management purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals covered by the system include current and former IAF employees for Federal employment. This system may also include limited information regarding employee spouses, dependents, emergency contacts, beneficiaries, or estate trustees who meet the definition of “individual” as defined in the Privacy Act.

CATEGORIES OF RECORDS IN THIS SYSTEM:

This system maintains records including:

Employee biographical and employment information: Employee name, other names used, citizenship, gender, date of birth, age, group affiliation, marital status, Social Security number (SSN), truncated SSN, legal status, place of birth, records related to position, occupation, duty location, security clearance, financial information, medical and family leave information, disability information, education information, driver's license, race, ethnicity, personal or work telephone number, personal or work email address, military status and service, home or mailing address, Taxpayer Identification Number (TIN), bank account information, professional licensing and credentials, family relationships, involuntary debt (garnishments or child support payments), employee common identifier (ECI), organization code, user identification and any other employment information.

Salary and benefits information: Salary data, retirement data, tax data, deductions, health benefits, allowances, insurance data, Flexible Spending Account, Thrift Savings Plan information and contributions, pay plan, payroll records, awards, court order information, back pay

information, debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee.

Timekeeping information: Time and attendance records, and leave records.

This system may also contain correspondence, documents and other information required to administer payroll, leave, and related functions.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, supervisors, timekeepers, previous employers, the Internal Revenue Service and state tax agencies, the Department of the Treasury, other Federal agencies, courts, state child support agencies, employing agency accounting offices, and third-party benefit providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities determined to be relevant and necessary outside IAF as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

- (1) IAF;
- (2) Any other Federal agency appearing before the Office of Hearings and Appeals;
- (3) Any IAF employee or former employee acting in his or her official capacity;
- (4) Any IAF employee or former employee acting in his or her individual capacity when IAF or DOJ has agreed to represent that employee or pay for private representation of the employee; or

(5) The United States Government or any agency thereof, when DOJ determines that IAF is likely to be affected by the proceeding.

B. To the Department of the Treasury or other Federal agency as required for payroll purposes, for preparation of payroll and other checks and electronic funds transfers to Federal, State, and local government agencies, non-

governmental organizations, and individuals.

C. To the Department of the Treasury, Internal Revenue Service, and state and local tax authorities for which an employee is or was subject to tax regardless of whether tax is or was withheld in accordance with Treasury Fiscal Requirements, as required.

D. To the Office of Personnel Management or its contractors in connection with programs administered by that office, including, but not limited to, the Federal Long Term Care Insurance Program, the Federal Dental and Vision Insurance Program, the Flexible Spending Accounts for Federal Employees Program, and the electronic Human Resources Information Program.

E. To another Federal agency to which an employee has transferred or to.

F. To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature.

G. To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

H. To Federal, State or local agencies where necessary to enable the employee's to obtain information relevant to the hiring or retention of that employee, or the issuance of a security clearance, contract, license, grant or other benefit.

I. To appropriate Federal and state agencies to provide reports including data on unemployment insurance.

J. To the Social Security Administration to credit the employee or emergency worker account for Old-Age, Survivors, and Disability Insurance (OASDI) and Medicare deductions.

K. To insurance carriers to report employee election information and withholdings for health insurance.

L. To charitable institutions when an employee designates an institution to receive contributions through salary deduction.

M. To the Department of the Treasury, Internal Revenue Service, or to another Federal agency or its contractor, to disclose debtor information solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal Government through the offset of tax refunds.

N. To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset

procedures in the collection of unpaid financial obligations owed the United States Government from an individual.

O. To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the employee's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

P. To the Department of the Treasury, Internal Revenue Service, and state and local authorities for the purpose of locating a debtor to collect a claim against the debtor.

Q. To the Federal Retirement Thrift Investment Board's record keeper, which administers the Thrift Savings Plan, to report deductions, contributions, and loan payments.

R. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for the purposes of locating individuals to establish paternity; establishing and modifying orders of child support; identifying sources of income; and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

S. To an expert, consultant, grantee, or contractor (including employees of the contractor) of IAF that performs services requiring access to these records on IAF's behalf to carry out the purposes of the system, including employment verifications, unemployment claims, W-2 processing services, leave and earning statements, and 1095-C Affordable Care Act statements.

T. To the Office of Personnel Management Employee Express, which is an employee self-service system, to initiate personnel and payroll actions and to obtain payroll information.

U. To the Department of Labor for processing claims for employees, emergency workers, or volunteers injured on the job or claiming occupational illness.

V. To Federal agencies and organizations to support interfaces with other systems operated by the Federal agencies for which the employee is located, for the purpose of avoiding duplication, increasing data integrity and streamlining government operations.

W. To another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

X. To the National Archives and Records Administration (NARA) to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

Y. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A-19.

Z. To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, regarding the issuance of a security clearance, license, contract, grant or other benefit.

AA. To state, territorial, and local governments, and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

BB. To the Department of the Treasury to recover debts owed to the United States.

CC. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of IAF or is necessary to demonstrate the accountability of IAF's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DD. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

EE. To other Federal agencies and organizations to provide payroll and personnel processing services under a shared service provider cross-servicing agreement for purposes relating to IAF cross-servicing agreement for purposes relating to IAF payroll and personnel processing.

FF. To the Office of Personnel Management, the Merit System Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

GG. To state offices of unemployment compensation to assist in processing an individual's unemployment, survivor annuity, or health benefit claim, or for records reconciliation purposes.

HH. To Federal Employees' Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

II. To any source from which additional information is requested by IAF relevant to a IAF determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

JJ. To the Social Security Administration and the Department of the Treasury to disclose pay data on an annual basis, and as necessary to execute their statutory responsibilities for the effective administration of benefits programs, payroll and taxes.

KK. To a Federal agency or in response to a congressional inquiry when additional or statistical information is requested relevant to a Federal benefit or program.

LL. To the Department of Health and Human Services for the purpose of providing information on new hires and quarterly wages as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

MM. To appropriate agencies, entities, and persons when:

(1) IAF suspects or has confirmed that there has been a breach of the system of records;

(2) IAF has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, IAF (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IAF's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

NN. To another Federal agency or Federal entity, when IAF determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national

security, resulting from a suspected or confirmed breach.

OO. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

PP. To a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of discovery, pursuant to appropriate court order or other judicial process in the course of criminal, civil or administrative litigation.

QQ. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

RR. Disclosure to Consumer Reporting Agencies: Disclosure pursuant to 5 U.S.C. 552a (b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or federal Claims Act of 1996 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained and stored electronically by IBC. Temporary paper records are maintained in file folders stored within a locked filing cabinet within IAF Headquarters in a secure facility and secure office area with controlled access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

FPPS authorized users, including IAF authorized personnel, may retrieve records by employee name, Social Security Number (SSN), Tax Identification Number (TIN), employee common identifier (ECI), birth date, or assigned person number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL:

Records are maintained in accordance with NARA approved record schedules for the retention of reports and data. Specifically, General Records Schedule (GRS) 1.0 "Finance" and GRS 2.0 "Human Resources" are applicable to the FPPS system.

The system generally maintains temporary records, and retention periods vary based on the type of record under each item and the needs of the agency. Paper records are disposed of by shredding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

During normal hours of operation, paper records are maintained in a locked file cabinet in a secured office area inside a secure facility under the control of authorized personnel. Paper records are shredded in accordance with Government data destruction standards.

To prevent misuse, (e.g., unauthorized browsing) IAF signed an Interconnection Security Agreement (ISA) and Memorandum of Understanding (MOU) with the IBC to clearly establish and document IBC and client security roles and responsibilities. Most of the employee data in FPPS is collected from individuals and entered into FPPS by an authorized Agency human resources professional with access to the system.

The FPPS system has undergone a formal Security Authorization and Accreditation and has been granted an authority to operate by the DOI in accordance with FISMA and NIST standards. FPPS is rated as FISMA Moderate based upon the type of data, and it requires strict security and privacy controls to protect the confidentiality, integrity, and availability of the sensitive PII contained in the system.

Data is protected by the following electronic security systems: Password, Firewall, Encryption, User ID, Intrusion Detection System, Virtual Private Network (VPN), Public Key Infrastructure (PKI) Certificates, Personal Identity Verification (PIV) Card.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself must send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR ACCESS" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which the individual is seeking records.

CONTESTING RECORD PROCEDURES:

An individual requesting the correction or removal of material from his or her records should send a signed, written request to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR CORRECTION" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which a change is

requested, and (3) clearly state the correction requested and provide any supporting information available.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST INQUIRY" and (1) must be signed by the individual, (2) must name or otherwise clearly describe the system of records on which the individual is seeking information about, and (3) should clearly state the requester's relationship with the IAF and timeframe (ex. former IAF employee from 2020–2021) to facilitate the location of any applicable records.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not applicable.

SYSTEM NAME AND NUMBER:

IAF Salesforce CRM, IAF–02.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The IAF Salesforce CRM application is hosted in the Salesforce Government Cloud. The physical location and technical operation of the system is at the Salesforce Government Cloud's Chicago (Elk Grove Village, IL) and Washington (Ashburn, VA) data centers.

SYSTEM MANAGER:

Chief Information Officer (CIO), Inter-American Foundation, 1331 Pennsylvania Ave. NW #1200, Washington, DC 20004, (202)–360–4530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 290f, 44 U.S.C. 3101, *et seq.*

PURPOSE(S) OF THE SYSTEM:

The Salesforce customer relationship management (CRM) system will serve as the agency's contact and relationship managing platform of record. It will provide the agency with a cost-effective, user-friendly, cloud-based, single, integrated platform solution to better engage our contacts, partners and other stakeholders by facilitating access to contact information, simplifying workflows, improving annual reporting and internal and external communications.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals covered by the system include donors, partners, and other stakeholders, including U.S. agencies, foundations, private sector, academia, not-for-profit organizations, Congress, IAF staff alumni, fellows, board members, current staff, and interns.

CATEGORIES OF RECORDS IN THIS SYSTEM:

This system contains information needed for customer engagement to facilitate the agency mission. This system maintains records including: Full name, Account Name, Account Physical Business, Address, Account Mailing Business Address, Title, Business Email address, Phone, Mobile Phone, Gender, Optional links to social networking profiles, Call Notes, Description of Partnerships and prospective partnerships.

RECORD SOURCE CATEGORIES:

The sources for information in the system are the individuals about whom the records are maintained. This may include business cards that are provided by the individual or official contact information. Furnishing of the information is voluntary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside IAF as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office, made at the written request of the constituent about whom the record is maintained.

b. To the National Archives and Records Administration (NARA) for records management purposes.

c. To Agency contractors, grantees, consultants, or experts who have been engaged to assist the agency in the performance of a Federal duty to which the information is relevant.

d. To a Federal, State, local, foreign, or tribal or other public authority, on request, in connection with the hiring or retention of an employee, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision.

e. To the Office of Management and Budget (OMB) when necessary to the review of private relief legislation pursuant to OMB circular No. A-19.

f. To designated Agency personnel for the purpose of performing an authorized audit or oversight evaluation.

g. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO), or other Federal agencies when the information is required for program evaluation purposes.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by IAF or another agency or entity) that rely upon the compromised information; (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IAF's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

i. In any criminal, civil or administrative legal proceeding, where pertinent, to which IAF, a IAF employee, or the United States or other entity of the United States Government is a party before a court or administrative body.

j. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and/or an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained and stored electronically in encrypted format within the Salesforce Government cloud controlled environment and accessed only by authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information may be retrieved by account name, individual name, or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with NARA approved record schedules, specifically, General Records Schedule (GRS) 6.5 "Public Customer Service Records", Item 20 and DAA-GRS2017-0002-0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Salesforce Government Cloud Plus system achieved a provisional Authority to Operate (ATO) at the "High" impact level issued by the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB). System access is limited to IAF authorized users utilizing multi-factor authentication.

IAF Salesforce CRM has configurable, layered data sharing and permissions features to ensure users have proper access. Authorized users have access only to the data and functions required to perform their job functions. Role based access is managed via IAF Salesforce administrators using Salesforce system administration, user, and security functions. PII information in the system will be encrypted and stored in place, and HTTPS protocol will be employed in accessing Salesforce.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself must send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR ACCESS" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which the individual is seeking records.

CONTESTING RECORD PROCEDURES:

An individual requesting the correction or removal of material from his or her records should send a signed, written request to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR CORRECTION" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which a change is requested, and (3) clearly state the correction requested and provide any supporting information available.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written

inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST INQUIRY" and (1) must be signed by the individual, (2) must name or otherwise clearly describe the system of records on which the individual is seeking information about, and (3) should clearly state the requester's relationship with the IAF and timeframe (ex. former IAF employee from 2020–2021) to facilitate the location of any applicable records.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

IAF GovGrants, IAF–03.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The IAF GovGrants application will be hosted in the FedRAMP-authorized Salesforce Government Cloud Plus U.S. designated data center environment(s). Authorized IAF personnel (staff and contractors) and external proponents and grantees (foreign and domestic) will access IAF's electronic grant management system via an online web portal. IAF Headquarters is located at 1331 Pennsylvania Ave. NW #1200, Washington, DC 20004. The IAF Salesforce CRM application is hosted in the Salesforce Government Cloud. The physical location of the Salesforce Data Center is currently 7600 Doane Drive, Manassas, VA 20109.

SYSTEM MANAGER:

Chief Information Officer (CIO), Inter-American Foundation, 1331 Pennsylvania Ave. NW #1200, Washington, DC 20004, (202)–360–4530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 290f; 44 U.S.C. 3101, *et seq.*; DATA Act, Public Law 113–101; Foreign Assistance Act, Public Law 87–195.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to provide the agency a web-based full life-cycle grants management system. This will allow IAF to centrally manage the grants process and provide the capability to manage grant applications, reviews, issue progress reports, make obligations and disbursements, record site visits, communicate with grantees and proponents, approve or reject

amendment requests, and hold other oversight documents. The IAF awards small grants to civil society organizations primarily in Latin America and the Caribbean, that support inclusive economic prosperity, reduce food insecurity, combat corruption, promote safety and security, protect the environment and build resilience to natural disasters, and sustainably manage natural resources.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

IAF employees, IAF contractors, individuals ("Representatives") representing entities applying for or receiving IAF support including support in the form of a grant, cooperative agreement, partnership agreement, equity agreement, or other IAF financed agreement ("Awardees"), and key individuals of Awardees ("Key Individuals") who are expected to primarily be responsible for the administration of, control, or benefit from IAF support. Almost all of the information for non-Federal individuals included in this system will be of non-U.S. citizens.

CATEGORIES OF RECORDS IN THIS SYSTEM:

This system maintains the following records on individuals:

IAF Employee full names, titles, phone numbers, email addresses;

IAF Contractor full names, titles, phone numbers, email addresses;

Representative full names, titles, organization mailing address, phone numbers, email addresses. In situations where the Awardee's bank account lists a Representative as a recipient on the account, bank account information related to the account is collected including bank name, SWIFT code, and bank account number.

Key Individual full names (including any aliases or variations of spelling), titles, type of Government-issued identification, Government-issued identification number, Countries of origin and citizenship, birthdates, and certifications.

RECORD SOURCE CATEGORIES:

The primary sources of information in the system are the Representatives who directly input information about their Awardees. Information may also be obtained directly from IAF employees or contractors. Additionally, information will originate from the System for Award Management (SAM.GOV) (GSA/GOVT–9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside IAF as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of State when it is necessary to conduct a check under Section 487 of the Foreign Assistance Act.

B. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other federal agency conducting litigation, or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. IAF or any department thereof;
2. Any employee or former employee of IAF in their official capacity;
3. Any employee or former employee of IAF in their individual capacity when the department of Justice or IAF has agreed to represent the employee; or
4. The United States or any agency thereof.

C. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

D. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

E. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

F. To appropriate agencies, entities, and persons when (1) IAF suspects or has confirmed that there has been a breach of the system of records; (2) IAF has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, IAF (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IAF's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

G. To another federal agency or federal entity, when IAF determines that

information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

H. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

I. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for IAF, when necessary to and accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to IAF officers and employees.

J. To an individual's employer or affiliated organization to the extent necessary to verify employment or membership status.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of IAF or is necessary to demonstrate the accountability of IAF's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained and stored electronically in encrypted format within the Salesforce Government Cloud Plus controlled environment and accessed only by authorized personnel.

IAF maintains records in this system in an electronic database and a digital file repository.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

IAF staff may retrieve records in this system by grantee/applicant name, organization representative, email address, application number, award number, report number, and disbursement number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with NARA approved record schedules, specifically, General Records Schedule (GRS) 1.2 "Grant and Cooperative Agreement Records", Item 10 and DAA-GRS2013-0008-0007, Item 20 and DAA-GRS2013-0008-0001, Item 21 and DAA-GRS-2013-0008-0006, Item 22 and DAA-GRS2103-0008-0002, and Item 30 and DAA-GRS-2013-0008-0003.

IAF otherwise maintains records in GovGrants on an indefinite basis for reference purposes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Salesforce Government Cloud Plus system achieved a provisional Authority to Operate (ATO) at the "High" impact level issued by the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB). System access is limited to IAF authorized users utilizing multi-factor authentication.

IAF GovGrants has configurable, layered data sharing and permissions features to ensure users have proper access. Authorized users have access only to the data and functions required to perform their job functions. Role based access is managed via IAF GovGrants administrators using Salesforce system administration, user, and security functions. PII information in the system will be encrypted in transit and at rest, and HTTPS protocol will be employed in accessing GovGrants.

Multi-factor authentication is required to access the system and data stored in the system of record is also protected by a firewall and intrusion detection.

RECORD ACCESS PROCEDURES:

An individual requesting records on themselves must send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR ACCESS" and must: (1) be signed by the individual, (2) name or

otherwise clearly describe the system of records in which the individual is seeking records.

CONTESTING RECORD PROCEDURES:

An individual requesting the correction or removal of material from their records should send a signed, written request to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR CORRECTION" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which a change is requested, and (3) clearly state the correction requested and provide any supporting information available.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on themselves should send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST INQUIRY" and (1) must be signed by the individual, (2) must name or otherwise clearly describe the system of records on which the individual is seeking information about, and (3) should clearly state the requester's relationship with the IAF and timeframe (ex. former IAF employee from 2020-2021) to facilitate the location of any applicable records.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

Natalia Mandrus,

Associate General Counsel.

[FR Doc. 2024-20595 Filed 9-10-24; 8:45 am]

BILLING CODE 7025-01-P

INTER-AMERICAN FOUNDATION

Privacy Act of 1974; System of Records

AGENCY: Inter-American Foundation.

ACTION: Notice of a new system of records.

SUMMARY: The Inter-American Foundation (IAF) proposes to add three new electronic systems of records: IAF/FPPS (Federal Personnel and Payroll System) (IAF-01), IAF Salesforce CRM (Customer Relationship Management) (IAF-02), IAF GovGrants (IAF-03). This notice is required to meet the requirements of the Privacy Act to

publish in the **Federal Register** a notice of the existence and character of records maintained by the agency.

DATES: This action will be effective without further notice on October 21, 2024 unless comments are received that would result in a contrary determination. Comments must be received by October 21, 2024.

ADDRESSES: Comments should include the system name the comments relate to and may be submitted electronically to PrivacyActRequests@iaf.gov or by mail to Chief Information Officer, Inter-American Foundation, 1331 Pennsylvania Ave. NW, Suite 1200, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dominic Bumbaca, Chief Information Security Officer, Inter-American Foundation, 1331 Pennsylvania Ave. NW, Suite 1200, Washington, DC 20004, at (202) 360-4530.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended, embodies fair information practice principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to records about individuals; these records are maintained in a "system of records," which refers to a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the existence and character of each system of records that the agency maintains and the routine uses of each system. In accordance with 5 U.S.C. 552a(r), the IAF has provided a report of these system of records to the Office of Management and Budget (OMB) and to Congress. The IAF is adding three new systems of records.

The Federal Personnel and Payroll System (FPPS) (IAF-01) is an online personnel and payroll system providing support to Federal agency customers through DOI's Interior Business Center (IBC). FPPS is customized to meet customer needs for creating and generating the full life cycle of personnel transactions. IAF uses FPPS to manage human resources and payroll functions; ensure proper payment for salary and benefits; track time worked, leave, or other absences for reporting and compliance purposes; and meet regulatory requirements. FPPS allows for immediate updates and edits of personnel and payroll data. IAF has

contracted with DOI IBC for human resource services including the use of FPPS. This SORN covers only the Inter-American Foundation data held within FPPS and does not cover the data of any other agencies utilizing DOI IBC's services nor does it cover data belonging to DOI.

The IAF Salesforce CRM system (IAF-02) is used to manage relationships with potential or current contacts, beneficiaries, partners, donors, and other civil society organizations. It supports the mission of the Agency by increasing transparency, improving outreach, communications, and collaboration efforts with our stakeholders, as well as employing sound, repeatable methodologies.

The IAF GovGrants system (IAF-03) will provide the agency a web-based full life-cycle grants management system. The system will maintain grant program information, notice of funding opportunities, agency award application package information, agency award agreement, and reporting information to meet compliance requirements with the Data Act and Foreign Assistance Act.

SYSTEM NAME AND NUMBER:

IAF/FPPS (Federal Personnel and Payroll System), IAF-01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) The system is located and managed at U.S. Department of the Interior, Interior Business Center, Personnel and Payroll Systems Division, 7301 West Mansfield Ave., MS D-2400, Denver, CO 80235-2230.

(2) Temporary paper records are also located at the IAF Headquarters, located at 1331 Pennsylvania Avenue NW, Suite 1200, North, Washington, DC 20004.

SYSTEM MANAGER(S):

Chief Information Officer (CIO), Inter-American Foundation, 1331 Pennsylvania Ave. NW, #1200, Washington, DC 20004, (202) 360-4530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101, *et seq.*, Government Organization and Employees; 31 U.S.C. 3512, *et seq.*, Executive Agency Accounting and Other Financial Management Reports and Plans; 31 U.S.C. 1101, *et seq.*, the Budget and Fiscal, Budget, and Program Information; 5 CFR part 293, subpart B, Personnel Records Subject to the Privacy Act; 5 CFR part 297, Privacy Procedures for Personnel Records; Executive Order 9397 as amended by Executive Order 13478, relating to Federal agency use of Social Security

numbers; and Public Law 101-576 (Nov. 15, 1990), the Chief Financial Officers (CFO) Act of 1990.

PURPOSE(S) OF THE SYSTEM:

The primary purpose of the system is to manage personnel and payroll functions, to ensure proper payment for salary and benefits, track time and attendance, leave, and other absences for reporting and compliance purposes; and facilitate reporting requirements to other Federal agencies, including the Department of the Treasury and the Office of Personnel Management, for payroll, tax, and human capital management purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals covered by the system include current and former IAF employees for Federal employment. This system may also include limited information regarding employee spouses, dependents, emergency contacts, beneficiaries, or estate trustees who meet the definition of "individual" as defined in the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records including:

Employee biographical and employment information: Employee name, other names used, citizenship, gender, date of birth, age, group affiliation, marital status, Social Security number (SSN), truncated SSN, legal status, place of birth, records related to position, occupation, duty location, security clearance, financial information, medical and family leave information, disability information, education information, driver's license, race, ethnicity, personal or work telephone number, personal or work email address, military status and service, home or mailing address, Taxpayer Identification Number (TIN), bank account information, professional licensing and credentials, family relationships, involuntary debt (garnishments or child support payments), employee common identifier (ECI), organization code, user identification and any other employment information.

Salary and benefits information: Salary data, retirement data, tax data, deductions, health benefits, allowances, insurance data, Flexible Spending Account, Thrift Savings Plan information and contributions, pay plan, payroll records, awards, court order information, back pay information, debts owed to the government as a result of overpayment, refunds owed, or a debt referred for collection on a transferred employee.

Timekeeping information: Time and attendance records, and leave records.

This system may also contain correspondence, documents and other information required to administer payroll, leave, and related functions.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals on whom the records are maintained, official personnel records of individuals on whom the records are maintained, supervisors, timekeepers, previous employers, the Internal Revenue Service and state tax agencies, the Department of the Treasury, other Federal agencies, courts, state child support agencies, employing agency accounting offices, and third-party benefit providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities determined to be relevant and necessary outside IAF as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

- (1) IAF;
- (2) Any other Federal agency appearing before the Office of Hearings and Appeals;
- (3) Any IAF employee or former employee acting in his or her official capacity;
- (4) Any IAF employee or former employee acting in his or her individual capacity when IAF or DOJ has agreed to represent that employee or pay for private representation of the employee; or
- (5) The United States Government or any agency thereof, when DOJ determines that IAF is likely to be affected by the proceeding.

B. To the Department of the Treasury or other Federal agency as required for payroll purposes, for preparation of payroll and other checks and electronic funds transfers to Federal, State, and local government agencies, non-governmental organizations, and individuals.

C. To the Department of the Treasury, Internal Revenue Service, and state and

local tax authorities for which an employee is or was subject to tax regardless of whether tax is or was withheld in accordance with Treasury Fiscal Requirements, as required.

D. To the Office of Personnel Management or its contractors in connection with programs administered by that office, including, but not limited to, the Federal Long Term Care Insurance Program, the Federal Dental and Vision Insurance Program, the Flexible Spending Accounts for Federal Employees Program, and the electronic Human Resources Information Program.

E. To another Federal agency to which an employee has transferred or to.

F. To any criminal, civil, or regulatory law enforcement authority (whether Federal, State, territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature.

G. To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

H. To Federal, State or local agencies where necessary to enable the employee's to obtain information relevant to the hiring or retention of that employee, or the issuance of a security clearance, contract, license, grant or other benefit.

I. To appropriate Federal and state agencies to provide reports including data on unemployment insurance.

J. To the Social Security Administration to credit the employee or emergency worker account for Old-Age, Survivors, and Disability Insurance (OASDI) and Medicare deductions.

K. To insurance carriers to report employee election information and withholdings for health insurance.

L. To charitable institutions when an employee designates an institution to receive contributions through salary deduction.

M. To the Department of the Treasury, Internal Revenue Service, or to another Federal agency or its contractor, to disclose debtor information solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal Government through the offset of tax refunds.

N. To any creditor Federal agency seeking assistance for the purpose of that agency implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States Government from an individual.

O. To any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect debts on the employee's behalf by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

P. To the Department of the Treasury, Internal Revenue Service, and state and local authorities for the purpose of locating a debtor to collect a claim against the debtor.

Q. To the Federal Retirement Thrift Investment Board's record keeper, which administers the Thrift Savings Plan, to report deductions, contributions, and loan payments.

R. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for the purposes of locating individuals to establish paternity; establishing and modifying orders of child support; identifying sources of income; and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

S. To an expert, consultant, grantee, or contractor (including employees of the contractor) of IAF that performs services requiring access to these records on IAF's behalf to carry out the purposes of the system, including employment verifications, unemployment claims, W-2 processing services, leave and earning statements, and 1095-C Affordable Care Act statements.

T. To the Office of Personnel Management Employee Express, which is an employee self-service system, to initiate personnel and payroll actions and to obtain payroll information.

U. To the Department of Labor for processing claims for employees, emergency workers, or volunteers injured on the job or claiming occupational illness.

V. To Federal agencies and organizations to support interfaces with other systems operated by the Federal agencies for which the employee is located, for the purpose of avoiding duplication, increasing data integrity and streamlining government operations.

W. To another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

X. To the National Archives and Records Administration (NARA) to conduct records management

inspections under the authority of 44 U.S.C. 2904 and 2906.

Y. To the Office of Management and Budget (OMB) during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A-19.

Z. To Federal, State, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, regarding the issuance of a security clearance, license, contract, grant or other benefit.

AA. To State, territorial, and local governments, and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

BB. To the Department of the Treasury to recover debts owed to the United States.

CC. To the news media and the public, with the approval of the Public Affairs Officer in consultation with counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of IAF or is necessary to demonstrate the accountability of IAF's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DD. To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible with the reason for which the records are collected or maintained.

EE. To other Federal agencies and organizations to provide payroll and personnel processing services under a shared service provider cross-servicing agreement for purposes relating to IAF cross-servicing agreement for purposes relating to IAF payroll and personnel processing.

FF. To the Office of Personnel Management, the Merit System Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

GG. To state offices of unemployment compensation to assist in processing an individual's unemployment, survivor

annuity, or health benefit claim, or for records reconciliation purposes.

HH. To Federal Employees' Group Life Insurance or Health Benefits carriers in connection with survivor annuity or health benefits claims or records reconciliations.

II. To any source from which additional information is requested by IAF relevant to a IAF determination concerning an individual's pay, leave, or travel expenses, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested.

JJ. To the Social Security Administration and the Department of the Treasury to disclose pay data on an annual basis, and as necessary to execute their statutory responsibilities for the effective administration of benefits programs, payroll and taxes.

KK. To a Federal agency or in response to a congressional inquiry when additional or statistical information is requested relevant to a Federal benefit or program.

LL. To the Department of Health and Human Services for the purpose of providing information on new hires and quarterly wages as required under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

MM. To appropriate agencies, entities, and persons when:

(1) IAF suspects or has confirmed that there has been a breach of the system of records;

(2) IAF has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, IAF (including its information systems, programs, and operations), the Federal Government, or national security; and

(3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IAF's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

NN. To another Federal agency or Federal entity, when IAF determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(1) Responding to a suspected or confirmed breach; or

(2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

OO. To an agency or organization for the purpose of performing audit or

oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

PP. To a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of discovery, pursuant to appropriate court order or other judicial process in the course of criminal, civil or administrative litigation.

QQ. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

RR. Disclosure to Consumer Reporting Agencies: Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or Federal Claims Act of 1996 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained and stored electronically by IBC. Temporary paper records are maintained in file folders stored within a locked filing cabinet within IAF Headquarters in a secure facility and secure office area with controlled access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

FPPS authorized users, including IAF authorized personnel, may retrieve records by employee name, Social Security Number (SSN), Tax Identification Number (TIN), employee common identifier (ECI), birth date, or assigned person number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in accordance with NARA approved record schedules for the retention of reports and data. Specifically, General Records Schedule (GRS) 1.0 "Finance" and GRS 2.0 "Human Resources" are applicable to the FPPS system.

The system generally maintains temporary records, and retention periods vary based on the type of record under each item and the needs of the agency. Paper records are disposed of by shredding.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

During normal hours of operation, paper records are maintained in a

locked file cabinet in a secured office area inside a secure facility under the control of authorized personnel. Paper records are shredded in accordance with Government data destruction standards.

To prevent misuse, (e.g., unauthorized browsing) IAF signed an Interconnection Security Agreement (ISA) and Memorandum of Understanding (MOU) with the IBC to clearly establish and document IBC and client security roles and responsibilities. Most of the employee data in FPPS is collected from individuals and entered into FPPS by an authorized Agency human resources professional with access to the system.

The FPPS system has undergone a formal Security Authorization and Accreditation and has been granted an authority to operate by the DOI in accordance with FISMA and NIST standards. FPPS is rated as FISMA Moderate based upon the type of data, and it requires strict security and privacy controls to protect the confidentiality, integrity, and availability of the sensitive PII contained in the system.

Data is protected by the following electronic security systems: Password, Firewall, Encryption, User ID, Intrusion Detection System, Virtual Private Network (VPN), Public Key Infrastructure (PKI) Certificates, Personal Identity Verification (PIV) Card.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself must send a signed, written inquiry to the System Manager at *PrivacyActRequests@iaf.gov* or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR ACCESS" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which the individual is seeking records.

CONTESTING RECORD PROCEDURES:

An individual requesting the correction or removal of material from his or her records should send a signed, written request to the System Manager at *PrivacyActRequests@iaf.gov* or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR CORRECTION" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which a change is requested, and (3) clearly state the correction requested and provide any supporting information available.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager at *PrivacyActRequests@iaf.gov* or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST INQUIRY" and (1) must be signed by the individual, (2) must name or otherwise clearly describe the system of records on which the individual is seeking information about, and (3) should clearly state the requester's relationship with the IAF and timeframe (ex. former IAF employee from 2020–2021) to facilitate the location of any applicable records.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not applicable.

SYSTEM NAME AND NUMBER:

IAF Salesforce CRM, IAF-02.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The IAF Salesforce CRM application is hosted in the Salesforce Government Cloud. The physical location and technical operation of the system is at the Salesforce Government Cloud's Chicago (Elk Grove Village, IL) and Washington (Ashburn, VA) data centers.

SYSTEM MANAGER(S):

Chief Information Officer (CIO), Inter-American Foundation, 1331 Pennsylvania Ave. NW, #1200, Washington, DC 20004, (202) 360–4530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 290f, 44 U.S.C. 3101, *et seq.*

PURPOSE(S) OF THE SYSTEM:

The Salesforce customer relationship management (CRM) system will serve as the agency's contact and relationship managing platform of record. It will provide the agency with a cost-effective, user-friendly, cloud-based, single, integrated platform solution to better engage our contacts, partners and other stakeholders by facilitating access to contact information, simplifying workflows, improving annual reporting and internal and external communications.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

Individuals covered by the system include donors, partners, and other stakeholders, including U.S. agencies,

foundations, private sector, academia, not-for-profit organizations, Congress, IAF staff alumni, fellows, board members, current staff, and interns.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information needed for customer engagement to facilitate the agency mission. This system maintains records including: Full name, Account Name, Account Physical Business, Address, Account Mailing Business Address, Title, Business Email address, Phone, Mobile Phone, Gender, Optional links to social networking profiles, Call Notes, Description of Partnerships and prospective partnerships.

RECORD SOURCE CATEGORIES:

The sources for information in the system are the individuals about whom the records are maintained. This may include business cards that are provided by the individual or official contact information. Furnishing of the information is voluntary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures that are generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside IAF as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

a. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office, made at the written request of the constituent about whom the record is maintained.

b. To the National Archives and Records Administration (NARA) for records management purposes.

c. To Agency contractors, grantees, consultants, or experts who have been engaged to assist the agency in the performance of a Federal duty to which the information is relevant.

d. To a Federal, State, local, foreign, or Tribal or other public authority, on request, in connection with the hiring or retention of an employee, the issuance or retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision.

e. To the Office of Management and Budget (OMB) when necessary to the review of private relief legislation pursuant to OMB circular No. A–19.

f. To designated Agency personnel for the purpose of performing an authorized audit or oversight evaluation.

g. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), the Government Accountability Office (GAO), or other Federal agencies when the information is required for program evaluation purposes.

h. To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by IAF or another agency or entity) that rely upon the compromised information; (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IAF's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

i. In any criminal, civil or administrative legal proceeding, where pertinent, to which IAF, a IAF employee, or the United States or other entity of the United States Government is a party before a court or administrative body.

j. To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and/or an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained and stored electronically in encrypted format within the Salesforce Government cloud controlled environment and accessed only by authorized personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information may be retrieved by account name, individual name, or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with NARA approved record schedules, specifically, General Records Schedule (GRS) 6.5 "Public

Customer Service Records", Item 20 and DAA-GRS2017-0002-0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Salesforce Government Cloud Plus system achieved a provisional Authority to Operate (ATO) at the "High" impact level issued by the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB). System access is limited to IAF authorized users utilizing multi-factor authentication.

IAF Salesforce CRM has configurable, layered data sharing and permissions features to ensure users have proper access. Authorized users have access only to the data and functions required to perform their job functions. Role based access is managed via IAF Salesforce administrators using Salesforce system administration, user, and security functions. PII information in the system will be encrypted and stored in place, and HTTPS protocol will be employed in accessing Salesforce.

RECORD ACCESS PROCEDURES:

An individual requesting records on himself or herself must send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR ACCESS" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which the individual is seeking records.

CONTESTING RECORD PROCEDURES:

An individual requesting the correction or removal of material from his or her records should send a signed, written request to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST FOR CORRECTION" and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which a change is requested, and (3) clearly state the correction requested and provide any supporting information available.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked "PRIVACY ACT REQUEST INQUIRY" and (1) must be

signed by the individual, (2) must name or otherwise clearly describe the system of records on which the individual is seeking information about, and (3) should clearly state the requester's relationship with the IAF and timeframe (ex. former IAF employee from 2020-2021) to facilitate the location of any applicable records.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

SYSTEM NAME AND NUMBER:

IAF GovGrants, IAF-03.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The IAF GovGrants application will be hosted in the FedRAMP-authorized Salesforce Government Cloud Plus U.S. designated data center environment(s). Authorized IAF personnel (staff and contractors) and external proponents and grantees (foreign and domestic) will access IAF's electronic grant management system via an online web portal. IAF Headquarters is located at 1331 Pennsylvania Ave. NW, #1200, Washington, DC 20004. The IAF Salesforce CRM application is hosted in the Salesforce Government Cloud. The physical location of the Salesforce Data Center is currently 7600 Doane Drive, Manassas, VA 20109.

SYSTEM MANAGER(S):

Chief Information Officer (CIO), Inter-American Foundation, 1331 Pennsylvania Ave. NW, #1200, Washington, DC 20004, (202) 360-4530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 290f; 44 U.S.C. 3101, *et seq.*; DATA Act, Public Law 113-101; Foreign Assistance Act, Public Law 87-195.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to provide the agency a web-based full life-cycle grants management system. This will allow IAF to centrally manage the grants process and provide the capability to manage grant applications, reviews, issue progress reports, make obligations and disbursements, record site visits, communicate with grantees and proponents, approve or reject amendment requests, and hold other oversight documents. The IAF awards small grants to civil society organizations primarily in Latin America and the Caribbean, that support inclusive economic prosperity, reduce

food insecurity, combat corruption, promote safety and security, protect the environment and build resilience to natural disasters, and sustainably manage natural resources.

CATEGORIES OF INDIVIDUALS COVERED BY THIS SYSTEM:

IAF employees, IAF contractors, individuals (“Representatives”) representing entities applying for or receiving IAF support including support in the form of a grant, cooperative agreement, partnership agreement, equity agreement, or other IAF financed agreement (“Awardees”), and key individuals of Awardees (“Key Individuals”) who are expected to primarily be responsible for the administration of, control, or benefit from IAF support. Almost all of the information for non-Federal individuals included in this system will be of non-U.S. citizens.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains the following records on individuals:

IAF Employee full names, titles, phone numbers, email addresses;

IAF Contractor full names, titles, phone numbers, email addresses;

Representative full names, titles, organization mailing address, phone numbers, email addresses. In situations where the Awardee’s bank account lists a Representative as a recipient on the account, bank account information related to the account is collected including bank name, SWIFT code, and bank account number.

Key Individual full names (including any aliases or variations of spelling), titles, type of Government-issued identification, Government-issued identification number, Countries of origin and citizenship, birthdates, and certifications.

RECORD SOURCE CATEGORIES:

The primary sources of information in the system are the Representatives who directly input information about their Awardees. Information may also be obtained directly from IAF employees or contractors. Additionally, information will originate from the System for Award Management (SAM.GOV) (GSA/GOVT-9).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside IAF as a routine use

pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of State when it is necessary to conduct a check under Section 487 of the Foreign Assistance Act.

B. To the Department of Justice (DOJ), including Offices of the United States Attorneys, or other Federal agency conducting litigation, or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. IAF or any department thereof;

2. Any employee or former employee of IAF in their official capacity;

3. Any employee or former employee of IAF in their individual capacity when the department of Justice or IAF has agreed to represent the employee; or

4. The United States or any agency thereof.

C. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

D. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

E. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

F. To appropriate agencies, entities, and persons when (1) IAF suspects or has confirmed that there has been a breach of the system of records; (2) IAF has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, IAF (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with IAF’s efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

G. To another Federal agency or Federal entity, when IAF determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the

Federal Government, or national security, resulting from a suspected or confirmed breach.

H. To an appropriate Federal, State, Tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

I. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for IAF, when necessary to and accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to IAF officers and employees.

J. To an individual’s employer or affiliated organization to the extent necessary to verify employment or membership status.

K. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of IAF or is necessary to demonstrate the accountability of IAF’s officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained and stored electronically in encrypted format within the Salesforce Government Cloud Plus controlled environment and accessed only by authorized personnel. IAF maintains records in this system in an electronic database and a digital file repository.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

IAF staff may retrieve records in this system by grantee/applicant name, organization representative, email address, application number, award number, report number, and disbursement number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with NARA approved record schedules, specifically, General Records Schedule (GRS) 1.2 “Grant and Cooperative Agreement Records”, Item 10 and DAA–GRS2013–0008–0007, Item 20 and DAA–GRS2013–0008–0001, Item 21 and DAA–GRS–2013–0008–0006, Item 22 and DAA–GRS2103–0008–0002, and Item 30 and DAA–GRS–2013–0008–0003.

IAF otherwise maintains records in GovGrants on an indefinite basis for reference purposes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Salesforce Government Cloud Plus system achieved a provisional Authority to Operate (ATO) at the “High” impact level issued by the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB). System access is limited to IAF authorized users utilizing multi-factor authentication.

IAF GovGrants has configurable, layered data sharing and permissions features to ensure users have proper access. Authorized users have access only to the data and functions required to perform their job functions. Role based access is managed via IAF GovGrants administrators using Salesforce system administration, user, and security functions. PII information in the system will be encrypted in transit and at rest, and HTTPS protocol will be employed in accessing GovGrants.

Multi-factor authentication is required to access the system and data stored in the system of record is also protected by a firewall and intrusion detection.

RECORD ACCESS PROCEDURES:

An individual requesting records on themselves must send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked “PRIVACY ACT REQUEST FOR ACCESS” and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which the individual is seeking records.

CONTESTING RECORD PROCEDURES:

An individual requesting the correction or removal of material from their records should send a signed, written request to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be

clearly marked “PRIVACY ACT REQUEST FOR CORRECTION” and must: (1) be signed by the individual, (2) name or otherwise clearly describe the system of records in which a change is requested, and (3) clearly state the correction requested and provide any supporting information available.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on themselves should send a signed, written inquiry to the System Manager at PrivacyActRequests@iaf.gov or the physical address above. The request envelope and letter should both be clearly marked “PRIVACY ACT REQUEST INQUIRY” and (1) must be signed by the individual, (2) must name or otherwise clearly describe the system of records on which the individual is seeking information about, and (3) should clearly state the requester’s relationship with the IAF and timeframe (ex. former IAF employee from 2020–2021) to facilitate the location of any applicable records.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Not Applicable.

Natalia Mandrus,
Associate General Counsel.

[FR Doc. 2024–20583 Filed 9–10–24; 8:45 am]

BILLING CODE 7025–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–592 and 731–TA–1400 (Review)]

Plastic Decorative Ribbon From China Determinations

On the basis of the record¹ developed in the subject five-year reviews, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping and countervailing duty orders on plastic decorative ribbon from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.²

¹ The record is defined in § 207.2(f) of the Commission’s Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioner Karpel did not participate.

Background

The Commission instituted these reviews on February 1, 2024 (89 FR 6540, February 1, 2024) and determined on May 6, 2024 that it would conduct expedited reviews (89 FR 56902, July 11, 2024).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on September 6, 2024. The views of the Commission are contained in USITC Publication 5541 (September 2024), entitled *Plastic Decorative Ribbon from China: Investigation Nos. 701–TA–592 and 731 TA 1400 (Review)*.

By order of the Commission.

Issued: September 6, 2024.

Sharon Bellamy,
Supervisory Hearings and Information Officer.

[FR Doc. 2024–20601 Filed 9–10–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1366]

Certain Semiconductor Devices, and Methods of Manufacturing Same and Products Containing the Same; Notice of a Commission Determination To Review a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (“Commission”) has determined to review a final initial determination (“ID”) of the presiding chief administrative law judge (“CALJ”), finding a violation of section 337 as to one asserted patent and no violation as to the other asserted patent. The Commission requests written submissions from the parties on the issues under review and submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below.

FOR FURTHER INFORMATION CONTACT:

Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202)

205–3042. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 3, 2023, based on a complaint filed by Efficient Power Conversion Corporation of El Segundo, California (“EPC”). 88 FR 42756–77 (Jul. 3, 2023). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, or sale within the United States after importation of certain semiconductor devices, and methods of manufacturing same, and products containing the same by reason of the infringement of one or more claims of U.S. Patent Nos. 10,312,335 (“the ‘335 patent’”); 8,350,294 (“the ‘294 patent’”); 8,404,508 (“the ‘508 patent’”); and 9,748,347 (“the ‘347 patent’”). *Id.* The complaint further alleged that a domestic industry exists. *Id.* The Commission’s notice of investigation named as respondents Innoscience (Zhuhai) Technology, Company, Ltd., of Zhuhai, Guangdong, China; and Innoscience America, Inc. of Santa Clara, California (together “Innoscience” or “Respondents”). The Office of Unfair Import Investigations was also named as a party in this investigation. *Id.*

On October 13, 2023, Chief Administrative Law Judge (“CALJ”) held a *Markman* hearing.

On December 13, 2023, the CALJ issued an initial determination (“ID”) granting a motion to terminate the investigation as to all asserted claims of the ‘347 patent. Order No. 9 (Dec. 13, 2023), *unreviewed by Comm’n Notice* (Jan. 11, 2024).

On February 12, 2024, the CALJ issued an ID granting a motion to terminate the investigation as to all asserted claims of the ‘335 patent. Order No. 12 (Feb. 12, 2024), *unreviewed by Comm’n Notice* (Mar. 12, 2024).

The CALJ held an evidentiary hearing from February 26, 2024 to March 1, 2024, and received post-hearing briefs thereafter.

On July 5, 2024, the CALJ issued the final ID finding a violation of section

337 as to claims 2 and 3 of the ‘294 patent and no violation of section 337 as to claim 1 of the ‘294 patent. The CALJ also found no violation of section 337 as to the only asserted claim of the ‘508 patent, claim 1. Specifically, the ID found that by appearing and participating in the investigation, the parties have consented to personal jurisdiction at the Commission. ID at 10–11. The ID found that EPC established the importation requirement under 19 U.S.C. 1337(a)(1)(B), noting that Innoscience does not dispute importing the accused products. *Id.* at 11–12. The ID found that because the accused products have been imported into the United States, the Commission has *in rem* jurisdiction over them. *Id.* at 12. The ID found that EPC owns the patents and thus has standing to assert the patents in this investigation. *Id.* The ID found that EPC successfully proved that the accused products infringe the asserted claims of the ‘294 patent (claims 1–3) but that unlike claims 2 and 3, claim 1 has been shown to be invalid for obviousness. ID at 30–51, 85–100. The ID found that EPC failed to prove that the accused products infringe claim 1 of the ‘508 patent and that Respondents failed to prove the claim invalid for obviousness. *Id.* at 52–68, 103–117. Finally, the ID found that EPC established the economic prong of the domestic industry requirement for both the ‘294 and ‘508 patents but failed to establish the technical prong of the domestic industry requirement for the ‘508 patent. ID at 120–151. Thus, the ID found the existence of a domestic industry that practices the ‘294 patent as required by 19 U.S.C. 1337(a)(2) but not one that practices the ‘508 patent.

The ID included the CALJ’s recommended determination on remedy and bonding (“RD”). The RD recommended, should the Commission find a violation, issuance of a limited exclusion order and cease and desist orders against the Respondents. ID/RD at 154–157. The RD also recommended imposing a bond in the amount of five percent of entered value for infringing products imported during the period of Presidential review. *Id.* at 158–159.

On July 19, 2024, EPC and Innoscience filed respective petitions for review of the ID. On July 29, 2024, the parties, including OUII, filed responses to the petitions.

Having reviewed the record of the investigation, including the final ID, the parties’ submissions to the CALJ, the petitions for review, and the responses thereto, the Commission has determined to review the ID in its entirety.

In connection with its review, the Commission requests responses to the

following questions. The parties are requested to brief their positions with reference to the applicable law and the existing evidentiary record.

(1) If the Commission were to adopt the construction, proposed by OUII, of the limitation “compensated GaN layer” recited in claim 1 of the ‘294 patent to mean “a GaN layer in which one type of impurity cancels the electric effects of another type of impurity,” how does that construction affect the ID’s infringement, invalidity, and technical prong of the domestic industry analyses?

(2) Did the CALJ correctly find that Uemoto fails to disclose element [1b] “a set of III–N transition layers above the substrate” recited in claim 1 of the ‘294 patent, even though neither EPC nor OUII disputed Respondents’ assertion that Uemoto disclosed this limitation? *See* ID at 73.

(3) Please explain whether claim 1 of the ‘508 patent is limited to using a single mask to etch both the gate contact and doped GaN layer based on the ‘508 patent’s description of the “present invention.” Please also explain whether performance of the claimed steps in the order [1f]–[1g]–[1i]–[1h] (as permitted under the ID’s construction of the order of steps) requires the use of a single mask to perform both etching steps or otherwise allows the use of two separate masks. If the Commission were to construe claim 1 of the ‘508 patent to require the claimed steps be performed in the recited order ([1f]–[1g]–[1h]–[1i]), how does that affect the ID’s infringement, invalidity, and technical prong of the domestic industry analyses?

(4) Please clarify whether EPC’s “total operating expenditures” identified on page 129 of the ID includes foreign manufacturing expenses for the domestic industry products.

The parties are invited to brief only the discrete issues requested above. The parties are not to brief other issues on review, which are adequately presented in the parties’ existing filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of, *inter alia*, (1) an exclusion order that could result in the exclusion of the subject articles from entry into the United States; and/or (2) cease and desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States

for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (Dec. 1994).

The statute requires the Commission to consider the effects of that remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and cease and desist orders would have on: (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. In addition, the Commission requests responses to the following question regarding the public interest:

Please provide specific facts and data with respect to Respondents' assertion that "an exclusion order would have significant impacts on U.S. consumers and economy at large" and that "[w]ithout a delay in the effective date of an exclusion order, an immediate and potentially multi-year shortage across a wide variety of industries could not be averted given alternative suppliers' existing production capacities and a lack of readily available GaN semiconductor devices." Resp. PI Stmt. at 2. Please include in your discussion, the shares of the U.S. market for EPC and Respondents, as well as other suppliers and whether these suppliers have the capability to supply U.S. demand in the event of an exclusion order and/or cease and desist orders.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues

identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the CALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the dates that the Asserted Patents expire, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on September 19, 2024. Reply submissions must be filed no later than the close of business on September 26, 2024. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 50 pages. Reply submissions are limited to 30 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337-TA-1366) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary, (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the

investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed with the Commission and served on any parties to the investigation within two business days of any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on September 5, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 5, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024-20514 Filed 9-10-24; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-733-736 and 731-TA-1702-1711 (Preliminary)]

Corrosion-Resistant Steel Products From Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations

and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701-TA-733-736 and 731-TA-1702-1711 (Preliminary) pursuant to the Tariff Act of 1930 (“the Act”) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of corrosion-resistant steel products from Australia, Brazil, Canada, Mexico, Netherlands, South Africa, Taiwan, Turkey, United Arab Emirates, and Vietnam, provided for in subheadings 7210.30.00, 7210.41.00, 7210.49.00, 7210.61.00, 7210.69.00, 7210.70.60, 7210.90.10, 7210.90.60, 7210.90.90, 7212.20.00, 7212.30.10, 7212.30.30, 7212.30.50, 7212.40.10, 7212.40.50, 7212.50.00, 7212.60.00, 7215.90.10, 7215.90.30, 7215.90.50, 7217.20.15, 7217.30.15, 7217.90.10, 7217.90.50, 7225.91.00, 7225.92.00, 7225.99.00, 7226.99.01, 7228.60.60, 7228.60.80, and 7229.90.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of Brazil, Canada, Mexico, and Vietnam. Unless the Department of Commerce (“Commerce”) extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by October 21, 2024. The Commission’s views must be transmitted to Commerce within five business days thereafter, or by October 28, 2024.

DATES: September 5, 2024.

FOR FURTHER INFORMATION CONTACT:

Alejandro Orozco (202-205-3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these investigations may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to

sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on September 5, 2024, by Steel Dynamics, Inc., Fort Wayne, Indiana; Nucor Corporation, Charlotte, North Carolina; United States Steel Corporation, Pittsburgh, Pennsylvania; the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC, Washington, DC; and Wheeling-Nippon Steel, Follansbee, West Virginia.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission’s Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission’s rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission’s rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on September 26, 2024. Requests to appear at the conference should be emailed to preliminaryconferences@usitc.gov (DO

NOT FILE ON EDIS) on or before September 24, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission’s Public Calendar (<https://www.usitc.gov/calendar>). A nonparty who has testimony that may aid the Commission’s deliberations may request permission to participate by submitting a short statement.

Please note the Secretary’s Office will accept only electronic filings during this time. Filings must be made through the Commission’s Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission’s rules, any person may submit to the Commission on or before 5:15 p.m. on October 1, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on September 25. All written submissions must conform with the provisions of § 201.8 of the Commission’s rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission’s rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter’s knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be

disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: September 6, 2024.

Sharon Bellamy,
Supervisory Hearings and Information Officer.

[FR Doc. 2024–20597 Filed 9–10–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Second Review)]

Utility Scale Wind Towers From China and Vietnam; Scheduling of Expedited Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (“the Act”) to determine whether revocation of the antidumping duty and countervailing duty orders on utility scale wind towers from China and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: July 5, 2024.

FOR FURTHER INFORMATION CONTACT: Julie Duffy (202) 708–2579, Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On July 5, 2024, the Commission determined that the domestic interested party group response to its notice of institution (89 FR 22445, April 1, 2024) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on September 11, 2024. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before September 19, 2024 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 19, 2024.

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

² The Commission has found the responses submitted on behalf of Wind Tower Trade Coalition to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Act; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 6, 2024.

Sharon Bellamy,
Supervisory Hearings and Information Officer.

[FR Doc. 2024–20599 Filed 9–10–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1123–0011]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Annual Certification Report and Equitable Sharing Agreement

AGENCY: Criminal Division (MLARS), Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Money Laundering and Asset Recovery Section, Criminal Division, will be submitting the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 11, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Teresa Franklin, Criminal Division (MLARS), 1400 New York Avenue NW, Washington, DC 20005, teresa.franklin2@usdoj.gov.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, [89 FR 48192], on [June 5, 2024], allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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/or
- 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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website 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 and entering either the title of the information collection or the OMB Control Number 1123–0011. This information collection request may be viewed at www.reginfo.gov. Follow the

instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *Title of the Form/Collection:* Annual Certification Report and Equitable Sharing Agreement.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is not an agency form number. The collection instrument is the Equitable Sharing Agreement and Certification. The applicable component within the Department of Justice is the Money Laundering and Asset Recovery Section ("MLARS"), in the Criminal Division

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: State, Local and Tribal Governments.

Abstract: This collection of information is authorized by 21 U.S.C. 881(e)(3). MLARS ensures such cooperation by requiring that all such "equitably shared" funds be used only for law enforcement purposes and not be distributed to other governmental agencies by the recipient law enforcement agencies. By requiring that law enforcement agencies that participate in the Equitable Sharing Program (Program) file an Equitable Sharing Agreement and Certification (ESAC), MLARS can readily ensure compliance with its statutory obligations.

The ESAC requires information regarding the receipt and expenditure of Program funds from the participating agency. Accordingly, it seeks information that is exclusively in the hands of the participating agency. This collection request is classified as a revision due to a new version of the Equitable Sharing Guide, that will be published by the end of the calendar year, in addition to format changes and deleting and relabeling some fields.

5. *Obligation to Respond:* Required to obtain or retain a benefit.

6. Total Estimated Number of Respondents: 6,000.

7. Total Estimated Number of Responses: 6,000.

8. Time per Response: .5 hours.

9. Total Estimated Annual Time Burden: 3,000 hours.

10. Total Estimated Annual Other Costs Burden: \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218 Washington, DC 20530.

Dated: September 5, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–20428 Filed 9–10–24; 8:45 am]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0116]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Authorization To Release Consumer/Credit Information—ATF Form 8620.26

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until October 11, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Niki Wiltshire, Personnel Security Division, by email at Niki.Wiltshire@atf.gov, or telephone at 202–648–9260.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, volume 89 page 54860, on Tuesday, July 2, 2024, allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should

address one or more of the following four points:

- 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/or
- 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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website 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 and entering either the title of the information collection or the OMB Control Number 1140–0116. This information collection request may be viewed at www.reginfo.gov. Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Authorization to Release Consumer/Credit Information.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 8620.26.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Individuals or households.

Abstract: The Authorization for Release of Consumer/Credit Information (ATF F 8620.26) is used to determine if a candidate for Federal or Contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) meets the Federal personnel security requirements regarding financial obligations. The information collection (IC) OMB #1140–0116 is being revised to make minor material changes to the form, such as removing the declination statement, signature/date fields and making minor revisions to the Paperwork Reduction Act Notice.

5. *Obligation to Respond:* Voluntary.

6. *Total Estimated Number of Respondents:* 2,000 respondents.

7. *Estimated Time per Respondent:* 5 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 167 hours.

10. *Total Estimated Annual Other Costs Burden:* \$0.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: August 4, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–20426 Filed 9–10–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

[OMB Control Number 1205–0NEW]

Agency Information Collection Activities; Emergency Request To Reinstate Prior Approved Forms Affecting the H–2A Temporary Agricultural Labor Certification Program and Agricultural Recruitment System

AGENCY: Employment and Training Administration, U.S. Department of Labor.

ACTION: General notice.

SUMMARY: The Department of Labor (DOL) will be submitting the following information collection request to the Office of Management and Budget (OMB) for emergency review and

approval in accordance with the Paperwork Reduction Act of 1995 (PRA). DOL is requesting OMB approve this emergency revision by September 12.

SUPPLEMENTARY INFORMATION:

Overview of This Information Collection

Title: Reinstatement of Prior Approved Forms Affecting the H–2A Temporary Agricultural Labor Certification Program and Agricultural Recruitment System

OMB Number: 1205–0NEW

Abstract: DOL uses Form ETA–9142A and Forms ETA 790/790A to meet its statutory and regulatory responsibilities for administering the H–2A program. Similarly, DOL uses Forms ETA 790/790B to administer the Agricultural Recruitment System (ARS).

Employers seeking to use the H–2A program to employ nonimmigrant workers to perform agricultural services or labor on a temporary or seasonal basis must submit a completed agricultural clearance order (Forms ETA790/790A) and *Application for Temporary Employment Certification* (Form ETA 9142A) electronically through the Office of Foreign Labor Certification's Foreign Labor Application Gateway (FLAG) system. Employers seeking to employ U.S. workers through the ARS intrastate and interstate job clearance system must submit a completed agricultural clearance order (Forms ETA 790/790B) to the applicable State Workforce Agency.

The emergency PRA clearance requested will allow DOL to utilize prior approved Forms ETA 790, 790A, 790B, and 9142A, which is necessary to ensure continuity in administering the H–2A program and the ARS nationwide. Within the 6-month period following emergency approval, DOL will seek public comment on the information collection package as provided under 5 CFR part 1320 and the Paperwork Reduction Act.

José Javier Rodríguez,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–20605 Filed 9–6–24; 4:15 pm]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****[Docket No. OSHA–2024–0006]****Federal Advisory Council on Occupational Safety and Health (FACOSH), Request for Nominations****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Request for nominations to serve on the Federal Advisory Council on Occupational Safety and Health (FACOSH).**SUMMARY:** The Assistant Secretary of Labor for Occupational Safety and Health (OSHA) invites interested parties to submit nominations for membership on the Federal Advisory Council on Occupational Safety and Health (FACOSH).**DATES:** Nominations for FACOSH must be submitted (postmarked, sent, transmitted, or received) by October 11, 2024.**ADDRESSES:** You may submit nominations and supporting materials by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically into Docket No. OSHA–2024–0006 at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the online instructions for submissions.

Docket: To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627)) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2024–0006). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: meilinger.francis2@dol.gov.

General information: Ms. Lana Morrison, Director, OSHA Office of Federal Agency Programs; telephone (202) 693–2128; email ofap@dol.gov.

Copies of this Federal Register document: Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information are also available on the OSHA web page at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:**I. Background**

FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 14109). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal agency. The FACOSH charter is available to read or download at <http://www.osha.gov>.

II. FACOSH Membership

FACOSH is comprised of 16 members, (eight members represent management of federal agencies and departments and eight members are from labor organizations that represent federal employees) who the Secretary appoints to staggered terms not to exceed three (3) years. The Assistant Secretary, who chairs FACOSH, is seeking nominations to fill five (5) positions on FACOSH that become vacant on January 1, 2025. The Secretary will appoint the new members to three (3) year terms. The number of members the Secretary will appoint to three-year terms beginning January 1, 2025, includes:

- One management representative; and
- Four labor representatives.

FACOSH members serve at the pleasure of the Secretary unless the member is no longer qualified to serve, resigns, or is removed by the Secretary. The Secretary may appoint FACOSH members to successive terms. FACOSH meets at least two (2) times per year.

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse FACOSH membership. Any interested person or organization may nominate one (1) or more qualified persons for membership on FACOSH. Interested persons are also invited and

encouraged to submit statements in support of specific nominees.

III. Nomination Requirements

Nominations must include the following information:

1. The nominee's contact information and current occupation or position;
2. Nominee's resume or curriculum vitae, including prior membership on FACOSH and other relevant organizations, associations and committees;
3. Category of membership (management, labor) the nominee is qualified to represent;
4. A summary of the nominee's background, experience and qualifications that addresses the nominee's suitability for the nominated membership category;
5. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and expertise in occupational safety and health, particularly as it pertains to the Federal workforce; and
6. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in FACOSH meetings and has no apparent conflicts of interest that would preclude membership on FACOSH.

IV. Member Selection

The Secretary will appoint FACOSH members based upon criteria including, but not limited to, the nominee's level of responsibility for occupational safety and health matters involving the Federal workforce, experience and competence in occupational safety and health, and willingness and ability to participate in FACOSH meetings regularly and fully. Federal agency management nominees who serve as their agency's Designated Agency Safety and Health Official (DASHO) and labor nominees who are responsible for Federal employee occupational safety and health matters within their respective organizations are preferred as management and labor members, respectively. The information received through the nomination process, along with other relevant sources of information, will assist the Secretary in making appointments to FACOSH. In selecting FACOSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of the new FACOSH members in the **Federal Register**.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the

preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. 10), Executive Order 12196 and 14109, Secretary of Labor's Order 8–2020 (85 FR 58393, 9/18/2020), 29 CFR part 1960 (Basic Program Elements for Federal Employee Occupational Safety and Health Programs), and 41 CFR part 102–3.

Signed at Washington, DC, on September 5, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–20528 Filed 9–10–24; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0125]

Occupational Safety and Health On-Site Consultation Agreements; Revision of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to revise the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Occupational Safety and Health On-Site Consultation Agreements. This revision will combine two separately approved data collections into one paperwork package for the On-Site Consultation Program. The agency is proposing to combine the Supporting Statement for Collection of Information, On-Site Consultation Agreements, Safety and Health Program Assessment Worksheet, OSHA Form 33, OMB Control Number 1218–0110, Expiration Date: February 28, 2025; and Supporting Statement for the Collection of Information Requirements in the PSM On-Site Consultation Agreements, OMB Control Number 1218–0281, Expiration Date: July 31, 2026.

DATES: Comments must be submitted (postmarked, sent, or received) by November 12, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to <https://www.regulations.gov>. Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2011–0125) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the “Public Participation” heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondents' (i.e., employers and consultants) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection from employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational

injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

Section 7(c)(1) of the OSH Act authorizes the Secretary of Labor (Secretary) to, “with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement.” Section 21(c) of the OSH Act authorizes the Secretary to “consult with and advise employers and employees . . . as to effective means of preventing occupational illnesses and injuries.”

Additionally, Section 21(d) of the OSH Act instructs the Secretary to “establish and support cooperative agreements with the States (and Territories) under which employers subject to the Act may consult with State¹ personnel (i.e., consultants) with respect to the application of occupational safety and health requirements under the Act or under State Plans approved under section 18 of the Act.” This gives the Secretary authority to enter into agreements with the States to provide On-Site Consultation services and establish rules under which employers may qualify for a programmed inspection deferral. To satisfy the intent of these and other sections of the OSH Act, OSHA codified the terms that govern cooperative agreements between OSHA and State governments whereby State agencies provide On-Site Consultation services to private employers to assist them in complying with the requirements of the OSH Act. The terms were codified as the On-Site Consultation Program regulations (29 CFR part 1908).

The On-Site Consultation Program regulations specify services to be provided, and practices and procedures to be followed by the State On-Site Consultation programs. Information collection requirements set forth in the On-Site Consultation Program regulations are in two categories: State Responsibilities and Employer Responsibilities. Eight regulatory provisions require information collection activities by the State. The Federal government provides 90 percent

¹ Use of State within this document in regards to the On-Site Consultation Agreements/Program refers to both State governments and U.S. Territories.

of the funds for On-Site Consultation services delivered by the States, which result in the information collection. Four requirements apply to employers and specify conditions for receiving the free consultation services.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is proposing that OMB revise the approval of the information collection requirements contained in the Occupational Safety and Health On-Site Consultation Agreements. The agency is requesting an adjustment decrease and a program change to incorporate the collections from OMB Control Number 1218-0281. The number of burden hours have decreased from 223,495 to 195,692 hours, a difference of 27,759 hours. OSHA attributes this to fewer visits being conducted in recent years, including FY 2023. The reason for the fewer visits is likely flat funding of the program and inflationary pressures due to cost-of-living increases. Also, some Consultation programs are only now reestablishing onsite visits to worksites that were inaccessible during restrictions that resulted from the COVID-19 pandemic. Although there have been burden hour increases associated with some activities (e.g., adding activities associated with consultation visits involving the assessment of worksites where Process Safety Management (PSM) evaluations are conducted that were previously approved in OMB Control Number 1218-0281, and OSHA's instructions to Consultation programs to use the entire Form 33 on more consultation visits, to enhance consultation services to small business employers), these burden hour increases have been fewer than the decreased burden hours associated with fewer visits.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Revision of a currently approved data collection.

Title: Occupational Safety and Health On-Site Consultation Agreements.

OMB Control Number: 1218-0110.

Affected Public: Business or other for-profits.

Number of Respondents: 23,166.

Number of Responses: 76,585.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 195,736.

Estimated Cost (Operation and Maintenance): \$0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at <https://www.regulations.gov>, which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202-693-1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA-2011-0125). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at <https://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link.

Contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627 for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational

Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8-2020 (85 FR 58393).

Signed at Washington, DC, on September 4, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024-20438 Filed 9-10-24; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 24-062]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, October 1, 2024, 1 p.m.–5 p.m. central time; and Wednesday, October 2, 2024, 8:30 a.m.–1:30 p.m. central time.

ADDRESSES: Meeting will be virtual. See dial-in and Webex Webinar information below under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Guignard, NAC Administrative Officer, NASA Headquarters, Washington, DC 20546, marcia.guignard@nasa.gov or at 202-763-3457.

SUPPLEMENTARY INFORMATION: As noted above, this meeting is virtual and will take place telephonically and via a webinar. If dialing in via toll number, you must use a touch-tone phone to participate in this meeting. Any interested person may join via Webex Webinar on October 1st at <https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=m097eabae15296a70ecd40a1c56c1ae9b>, the webinar number is 2825 365 0502, and the webinar password is RAVeP2iv@35 (72837248 when dialing from a phone or video system). The toll number to listen by phone is +1-415-527-5035 and the access code is 282 536 50502. Any interested person may join via Webex Webinar on October 2nd at <https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=mfc4a15e035c6f3228112a3713474de2e>, the

webinar number is 2821 274 3942 and the webinar password is 3DGhVpKN4?8 (33448756 when dialing from a phone or video system). The toll number to listen by phone is +1-415-527-5035 and the access code is 282 127 43942.

The agenda for the meeting will include a discussion of recommendations and reports on the following NAC priority focus areas:

- Climate Change
- Commercial and Industry Partnerships
- Diversity, Equity, Inclusion and Accessibility
- International Collaboration
- Program Management and Acquisition

The agenda for the meeting will also include reports from the following NAC committees:

- Aeronautics Committee
- Human Exploration and Operations Committee
- Science Committee
- STEM Engagement Committee
- Technology, Innovation and Engineering Committee

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Jamie M. Krauk,

*Advisory Committee Management Officer,
National Aeronautics and Space
Administration.*

[FR Doc. 2024–20575 Filed 9–10–24; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection

Activities: Comment Request: NSF Research Experience and Mentoring Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish 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 12, 2024 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT:

Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Room E6447, 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: NSF Research Experience and Mentoring Survey.

OMB Number: 3145–0261.

Expiration Date of Approval: November 30, 2024.

Type of Request: Intent to seek approval to renew an information collection.

Abstract: The Research Experience and Mentoring (REM) Program supports the active involvement of research participants (RPs) that include high school students, Science, Technology, Engineering and Mathematics (STEM) teachers, undergraduate STEM students, faculty, and veterans, in hands-on research in order to bring participants into contact with STEM mentors and expose them to a summer research experience. Research participants are recruited as cohorts in order to facilitate mentoring and research activities, community building, and provide mutual student support.

The main goals of the REM Program are to provide research experiences and mentored opportunities to STEM students and/or educators that may ultimately enhance their career and academic trajectories while enhancing NSF research projects by the Emerging Frontiers in Research and Innovation (EFRI) program, the Engineering Research Centers (ERC), and the Industry-University Cooperative Research Centers (IUCRC). The REM Program may also enable the building of long-term collaborative partnerships among EFRI, ERC-, and ICUCR-supported researchers, community colleges, local four-year colleges, and local school districts.

A REM supplement of maximum of \$110,000 over a 1-year period. Activities that are innovative and site-specific are encouraged. Effective REM programs typically have many of the following characteristics, which are provided here as general guidelines: mentorship training for researchers and affiliated graduate students or postdoctoral researchers; well-designed, introductory training for RPs; six to ten weeks of summer research (full time); continued

mentorship of RPs throughout the academic year; participation of RPs in research team meetings and topic-related conferences or workshops; and guidance for RPs in co-authoring publications and/or posters.

NSF is requesting OMB approval for the REM program to collect information from past and present research participants and mentors. The REM program seeks to collect data from research participants and mentors to: (1) *inform REM programming* (e.g., to identify areas of growth); and (2) *conduct retrospective analysis of the REM program* to assess the success of REM historically.

Use of the Information: The information collected is primarily for the use of the NSF REM program to assess the success of the program and for informing decisions NSF will make regarding future programming and support provided to research participants.

Estimate burden on the public:

Estimated at 180 hours for a one-time collection.

Respondents: All REM research participants and mentors will be invited to respond to the survey. The REM research participants include high school students, STEM teachers, undergraduate STEM students, faculty, and veterans.

Estimated number of respondents: 540 (representing a 60% response rate).

Average Time per Reporting: The online survey is comprised primarily of closed-ended questions and is designed to be completed by respondents in under 20 minutes.

Frequency: One-time collection.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

Please submit one copy of your comments by only one method. All submissions received must include the agency name and collection name identified above for this information collection. Commenters are strongly encouraged to transmit their comments

electronically via email. Comments, including any personal information provided become a matter of public record. They will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

Dated: September 6, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–20606 Filed 9–10–24; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Senior Executive Service-Performance Review Board

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT:

Kimberly Sylke, OPM Human Resources, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, (202) 936–3339.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management (OPM), one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor and considers recommendations to the appointing authority regarding the performance of the senior executive. Notice is hereby given of the appointment of members of the OPM Performance Review Board.

The following have been designated as members of the Fiscal Year 2024 Performance Review Board of the U.S. Office of Personnel Management:

David Marsh, Chief of Staff, Chair
Laurie Bodenheimer, Associate Director,
Healthcare and Insurance

Carmen Garcia, Chief Human Capital
Officer

John Gill, Executive Director, Human
Capital Data Management and
Modernization

Veronica Hinton, Associate Director,
Workforce Policy and Innovation

Jane Lee, Senior Advisor to the Director
Webb Lyons, General Counsel

Kathryn Malague, Chief Management
Officer

Catherine Manfre, Chief Transformation
Officer

Margaret Pearson, Associate Director,
Retirement Services

Dianna Saxman, Associate Director,
Human Resources Solutions Office of
Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–20609 Filed 9–10–24; 8:45 am]

BILLING CODE 6325–45–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review 3206–0261: Questionnaire for Non-Sensitive Positions (SF 85)

AGENCY: Office of Personnel
Management.

ACTION: 60-Day notice and request for
comments.

SUMMARY: The Office of Personnel
Management (OPM) proposes to request
the Office of Management and Budget
(OMB) renew a previously approved
information collection, Questionnaire
for Non-Sensitive Positions (SF 85).

DATES: Comments are encouraged and
will be accepted until November 12,
2024. This process is conducted in
accordance with 5 CFR 1320.8(d)(1).

ADDRESSES: You may submit comments,
identified by docket number and/or
Regulatory Information Number and
title, by the following method:

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

All submissions received must
include the agency name and docket
number or RIN for this document. The
general policy for comments and other
submissions from members of the public
is to make these submissions available
for public viewing at <http://www.regulations.gov> as they are
received without change, including any
personal identifiers or contact
information.

FOR FURTHER INFORMATION CONTACT: A
copy of this ICR, with applicable
supporting documentation, may be
obtained by email to SuitEAforms@opm.gov, or by contacting Lynette
Hornung 202–599–0090, or U. S. Office
of Personnel Management, Suitability
Executive Agent Programs, P.O. Box
699, Slippery Rock, PA 16057.

SUPPLEMENTARY INFORMATION: As
required by the Paperwork Reduction
Act of 1995, 44 U.S.C. 3506(c)(2), OPM
is soliciting comments for this
collection. The Office of Management
and Budget is particularly interested in
comments that:

1. Evaluate whether the proposed
collection of information is necessary
for the proper performance of functions
of the agency, including whether the
information will have practical utility;

2. Evaluate the accuracy of the
agency's estimate of the burden of the
proposed collection of information,
including the validity of the
methodology and assumptions used;

3. Enhance the quality, utility, and
clarity of the information to be
collected; and

4. Minimize the burden of the
collection of information on those who
are to respond, including through the
use of appropriate automated,
electronic, mechanical, or other
technological collection techniques or
other forms of information technology,
e.g., permitting electronic submissions
of responses.

Background

The Questionnaire for Non-Sensitive
Positions, Standard Form 85 (SF 85) is
an information collection completed by
applicants for, or incumbents of, Federal
Government civilian positions, or
positions in private entities performing
work for the Federal Government under
contractor. The collection is used as the
basis of information for background
investigations to establish that such
individuals are:

- Suitable for employment or
retention in Federal employment in a
low risk, non-sensitive position, or fit
for employment or retention in Federal
employment in the excepted service
when the duties to be performed are
equivalent to a low risk, non-sensitive
position;
- Fit to perform work on behalf of the
Federal Government pursuant to the
Government contract, when the duties
to be performed are equivalent to a low
risk, non-sensitive position;
- Eligible for physical and logical
access to federally controlled facilities
or information systems, when the duties
to be performed by the individual are
equivalent to the duties performed by an
employee in a low risk, non-sensitive
position.

For applicants, the SF 85 is used only
after a conditional offer of employment
has been made. eApplication (eApp) is
a web-based system application that
houses the SF 85. A variable in
assessing burden hours is the nature of
the electronic application. The
electronic application includes
branching questions and instructions
which provide for a tailored collection
from the respondent based on varying
factors in the respondent's personal
history. The burden on the respondent
is reduced when their personal history

is not relevant to particular questions, since the question branches or expands for additional details only for those individuals who have pertinent information to provide regarding that line of questioning. Accordingly, the burden on the respondent will vary depending on whether the information collection relates to the respondent's personal history.

OPM recommends renewal of the form with no changes. As we await the implementation of the Personnel Vetting Questionnaire, which was approved by the Office of Management and Budget (87 FR 71700 and 88 FR 12703) on November 15, 2023, agencies continue to use the SF 85 for investigations of individuals holding low risk non-sensitive positions.

Analysis

Agency: Office of Personnel Management.

Title: Questionnaire for Non-Sensitive Positions, Standard Form 85 (SF 85).

OMB Number: 3206-0261.

Frequency: On occasion.

Affected Public: Individuals.

Number of Respondents: 55,040.

Estimated Time per Respondent: 120 minutes.

Total Burden Hours: 110,080.

Alexys Stanley,

Federal Register Liaison.

[FR Doc. 2024-20563 Filed 9-10-24; 8:45 am]

BILLING CODE 6325-38-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024-618 and CP2024-626; MC2024-619 and CP2024-627; MC2024-620 and CP2024-628; MC2024-621 and CP2024-629; MC2024-622 and CP2024-630; MC2024-623 and CP2024-632; MC2024-624 and CP2024-633; MC2024-625 and CP2024-634; MC2024-626 and CP2024-635]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 13, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. Docketed Proceeding(s)

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.

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).

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2024-618 and CP2024-626; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 298 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* September 13, 2024.

2. *Docket No(s):* MC2024-619 and CP2024-627; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 299 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Samuel Robinson; *Comments Due:* September 13, 2024.

3. *Docket No(s):* MC2024-620 and CP2024-628; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 329 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* September 13, 2024.

4. *Docket No(s):* MC2024-621 and CP2024-629; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 300 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 5, 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 13, 2024.

5. *Docket No(s):* MC2024-622 and CP2024-630; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 301 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 5, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Gregory S. Stanton; *Comments Due:* September 13, 2024.

6. *Docket No(s):* MC2024-623 and CP2024-632; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 302 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:*

September 5, 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 13, 2024.

7. *Docket No(s)*: MC2024–624 and CP2024–633; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 330 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 5, 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 13, 2024.

8. *Docket No(s)*: MC2024–625 and CP2024–634; *Filing Title*: USPS Request

to Add Priority Mail & USPS Ground Advantage Contract 331 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Samuel Robinson; *Comments Due*: September 13, 2024.

9. *Docket No(s)*: MC2024–626 and CP2024–635; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 332 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 5, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR

3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: September 13, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–20546 Filed 9–10–24; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings

(Issued September 5, 2024)

	Docket No.
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 291.	MC2024–610
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 291 (MC2024–610). Negotiated Service Agreements.	CP2024–618
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 292.	MC2024–611
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 292 (MC2024–611). Negotiated Service Agreements.	CP2024–619
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 293.	MC2024–612
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 293 (MC2024–612). Negotiated Service Agreements.	CP2024–620
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 294.	MC2024–613
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 294 (MC2024–613). Negotiated Service Agreements.	CP2024–621
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contracts. Priority Mail & USPS Ground Advantage Contract 328.	MC2024–614
Competitive Product Prices: Priority Mail & USPS Ground Advantage Contract 328 (MC2024–614). Negotiated Service Agreements.	CP2024–622
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 295.	MC2024–615
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 295 (MC2024–615). Negotiated Service Agreements.	CP2024–623
Competitive Product Prices:	MC2024–616

	Docket No.
Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 296.	
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 296 (MC2024–616). Negotiated Service Agreements.	CP2024–624
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contracts. Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 297.	MC2024–617
Competitive Product Prices: Priority Mail Express, Priority Mail & USPS. Ground Advantage Contract 297 (MC2024–617). Negotiated Service Agreements.	CP2024–625

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.

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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)*: MC2024–610 and CP2024–618; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 291 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 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 12, 2024.

2. *Docket No(s)*: MC2024–611 and CP2024–619; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 292 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 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 12, 2024.

3. *Docket No(s)*: MC2024–612 and CP2024–620; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 293 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 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 12, 2024.

4. *Docket No(s)*: MC2024–613 and CP2024–621; *Filing Title*: USPS Request to Add Priority Mail Express, Priority

Mail & USPS Ground Advantage Contract 294 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 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 12, 2024.

5. *Docket No(s)*: MC2024–614 and CP2024–622; *Filing Title*: USPS Request to Add Priority Mail & USPS Ground Advantage Contract 328 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: September 12, 2024.

6. *Docket No(s)*: MC2024–615 and CP2024–623; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 295 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: September 12, 2024.

7. *Docket No(s)*: MC2024–616 and CP2024–624; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 296 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: September 12, 2024.

8. *Docket No(s)*: MC2024–617 and CP2024–625; *Filing Title*: USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage

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).

Contract 297 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: September 4, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: September 12, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100935; File No. SR–ICC–2024–005]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to ICC's Treasury Operations Policies and Procedures

September 5, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ 15 U.S.C. 78s(b)(1) and Rule 19b–4,² notice is hereby given that on August 22, 2024, ICE Clear Credit LLC (“ICC”) 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 primarily prepared by ICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to revise the ICC Treasury Operations Policies and Procedures (“Treasury Policy”). These revisions do not require any changes to the ICC Clearing Rules (the “Rules”).

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on

the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

ICE Clear Credit is proposing to amend its Treasury Policy. The purpose of the Treasury Policy is to articulate the policies and procedures used to support the ICC Treasury Department (the “Treasury Department”), which is responsible for daily cash and collateral management of margin and guaranty fund assets. The purpose of the proposed changes is to make various updates and clarifications, including to further explain the goals and the responsibilities of the ICC Treasury Department in performing treasury functions for cleared contracts, as well as safeguarding securities and funds in custody. The amendments also clarify the timing of the return of a withdrawing Clearing Participant's (“CP”) guaranty fund (“GF”) deposit to be consistent with the Rules, as discussed herein. The amendments would clarify the ICC investment policy with respect to ICC's own operating capital to provide greater flexibility to make direct investments, as discussed below, and update various references to SWIFT messaging so as not to become outdated. Various non-substantive drafting changes and improvements would also be made throughout the Treasury Policy, such as updating the use of defined terms, correcting typographical errors and similar changes. The amendments do not represent a change in ICC's practices relating to treasury management, but rather are intended to improve and clarify the documentation and descriptions of such practices.

ICC proposes to update the treasury department section of the Treasury Policy.³ The amendments would update the statement of the overall responsibilities of ICC, aided by the Treasury Department, to specifically reference facilitating the prompt and accurate clearing and settlement of securities transactions and derivatives, and safeguarding securities and funds in ICC's custody or control for which it is responsible. Additionally, the

amendments would remove the reference to the ICC Risk Management Framework when developing investment and collateral management strategies. The amendments would clarify certain references and terms throughout this section, such as referencing the “General Guaranty Fund” as defined in ICC Rule 102, as well as referencing cash and non-cash collateral (which was previously phrased as “cash and collateral” or “cash or collateral”) throughout the Treasury Policy. With respect to the Treasury Departments responsibilities to manage Guaranty Fund requirements and “posting” by Clearing Participants, the amendments would change the reference from “posting” to “collateral postings” to provide a clearer and more accurate description of Treasury's responsibilities. Certain references to margin accounts, margin payments and margin requirements or processes (and words of similar effect) will be revised to refer more generally to accounts, payments and related clearing or processes requirements (or requirements), in order to more broadly reference overall payment requirements from the clearing process (which include but are not limited to margin). The amendments would highlight that ICE Clear Credit, rather than ICE Clear Credit's Risk Department, generates daily requirements for all Clearing Participants (including requirements for indirect participants *i.e.*, Client-Related requirements) because such requirements are generated automatically by ICE Clear Credit's clearing systems as opposed being generated specifically by ICE Clear Credit's Risk Department. Further, the amendments note that such daily requirements are based on the Clearing Participants' cleared “positions” rather than their cleared “trades” as positions is a more accurate description of a Clearing Participants cleared activity at ICE Clear Credit. The amendments also clarify the Treasury Departments responsibility in ensuring that payments are received from Clearing Participants by removing an incorrect reference to ensuring that payments are honored by Clearing Participants' banking relationships. Under ICC's existing direct settlement model, as discussed below, Clearing Participants are responsible to ensure that ICC timely receives all required payments; completion of settlement is not based on whether a Clearing Participant's bank honors a payment direction. Similarly, references to settlement issues have been generalized to reference treasury management related issues, and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Treasury Policy Section “II. The Treasury Department.”

references to substitution of collateral for cash have been replaced by the more general description of performing collateral substitutions. These changes do not reflect a substantive change in practice, but rather are intended to provide a more comprehensive overall description of relevant payment practices. In the statement of the Treasury Departments role in developing of investment and collateral management strategies, the amendments would remove an outdated reference to such activities being done within the ICC Risk Management Framework, as the relevant investment and collateral management policies are now set out in the Treasury Policy rather than in the framework. The amendment would also generalize a reference to cash management to the broader term collateral management to more fully describe the scope of this activity and for consistency throughout the Treasury Policy. The amendments also clarify the organizational structure of the Treasury Department function, as overseen by the ICC Treasury Director who reports to the ICC Chief Operating Officer (“COO”) (and clarifies that the ICC Treasury Department is not and has never been a part of the operations department).

ICC also proposes to update the funds management section of the Treasury Policy.⁴ The amendments would add conforming references to “requirements” in certain places for consistency in referring to margin and Guaranty Fund requirements. In addition, the amendments would clarify or add various defined terms relating to margin, including a defined term for “Margin” covering both initial and mark-to-market margin. A definitional footnote relating to the Guaranty Fund would be removed as unnecessary in light of prior references to that term in the Treasury Policy. Additionally, the amendments would clarify that the funds would include both cash and non-cash collateral. For completeness and consistency with the existing Rules and other procedures of ICC, the amendments would state that ICC maintains and manages “House Margin” and “Client Margin” separately. The amendments also clarify that required initial margin and GF contributions are held in a manner that minimizes the risk of loss or delay in access, consistent with regulatory requirements (which reflects the standard under applicable regulations), rather than referring only to highly liquid and short-term investments. Under Section III.B., Investment Strategy, various conforming

and non-substantive drafting changes would be made, including to the use of appropriate defined terms and consistent references to cash collateral (instead of cash). References in the existing Treasury Policy to certain investments to be made by the Director of Treasury would be revised to simply refer to the Treasury Department as a whole, reflecting actual practice that investments are made by Treasury Department personnel subject to the supervision of the Director of Treasury. In the discussion of investment of US dollar cash, additional clarifying language would be added to this section such as describing the role of the Federal Reserve Bank of Chicago (“FRB”) as a depository and noting that US dollar cash may be invested in US Treasury/Agency reverse repurchase agreements rather than just Treasury/Agency reverse repurchase agreements. The amendments would also reflect that ICC currently maintains multiple accounts (rather than a single account) at the FRB, as discussed below. For reverse repo transactions, the amendments would also remove an unnecessary description of certain settlement arrangements and unnecessary statements regarding steps ICC would take to ensure replacement securities are eligible and valued correctly when a substitution of securities becomes necessary (as ICC does not believe such matters are relevant to the level of detail of the description contained in the Treasury Policy). The amendments would revise the description of the calculation of the minimum cash required to be invested in bilateral reverse repos to reflect 45% of the top two Clearing Participants’ Margin requirements (taking into account specifically both initial and mark-to-market margin requirements, as opposed to referencing the generalized phrase “risk margin”), as ICC believes that this is the more detailed and accurate description of ICC’s current practices. Additionally, the amendments would acknowledge that bilateral reverse repo transactions may be settled through alternative counterparties that may be added in the future to account for the possibility that ICE Clear Credit’s financial service provider relationships may change in the future. The amendments would also clarify that ICC in practice uses more than one outside investment manager to facilitate its investment of Guaranty Fund and margin cash.

ICC also proposes revisions to the Tables of collateral liquidity requirements contained in Section III of

the Treasury Policy⁵ to update various defined terms and references (both in the text of the Tables and the titles of the Tables) to be consistent with the other amendments being made to the Treasury Policy, such as to use the defined term Margin and to conform the terminology for the currencies and collateral (US Dollar Cash, EUR Cash, and US Treasury Securities). An amendment will also change a reference from “assets” to “collateral”, to more precisely describe the collateral being described. A statement relating to additional margin that may be called where a clearing participant does not meet the required liquidity requirements has been clarified to refer more precisely to initial margin. In addition, ICC proposes revising the participant withdrawals’ sub-section of Section III of the Treasury Policy⁶ to reflect that the requirements described are based on the ICC Rules and to add a statement that Guaranty Fund deposits will not be returned until after all positions of the withdrawing participant have been closed out and all liabilities of the participant to ICC have been satisfied, in order to be consistent with the requirements of existing Rule 807. The amendments would also remove a statement that if a participant provides notice of withdrawal less than 60 days from the end of the calendar quarter, its withdrawal will not be effective until the end of the following quarter, as this requirement is not set forth in the Rules.

The discussion of ICC’s use of committed repo facilities would clarify that any expenses (including but not limited to interest expenses) incurred through such facilities following a Clearing Participant default will be attributed to the account of that CP, consistent with the general approach for allocation of close-out costs to a defaulter under the Rules.

ICC proposes revising the cash settlement section of the Treasury Policy.⁷ Under the cash settlement section, the examples of types of transaction payments have been expanded to include options premia and interest on Mark-to-Market Margin, reflecting current practice. The amendments would also add further

⁵ Table 1 Collateral Liquidation Assumptions (US Dollar denominated requirements); Table 2 Collateral Liquidation Assumptions (Euro denominated requirements); Table 3 House Initial Margin & Guaranty Fund Liquidity Requirements (Non-Client US Dollar denominated requirements); and Table 4 House Initial Margin & Guaranty Fund Liquidity Requirements (Non-Client Euro denominated requirements) (collectively, the “Tables”).

⁶ Treasury Policy Section III, Sub-Section “D. Participants’ Withdrawal.”

⁷ Treasury Policy Section “IV. Cash Settlement.”

⁴ Treasury Policy Section “III. Funds Management.”

explanation of the existing ICC direct settlement model used to manage cash movements, for consistency and to provide greater clarity as to settlement operations. As described, the direct settlement requires the Clearing Participants to establish settlement bank arrangements and make requested payments to ICC in the required timeframe. ICC maintains direct debit authority over the settlement bank accounts of Clearing Participants.

In addition, the amendments to Section IV would add to the current criteria for ICE Clear Credit's settlement banks (which include requirements as to regulation and supervision, capital requirements for non-US institution, absence of majority sovereign ownership, internal ICC credit requirements and operational capability) a requirement that the bank provide specific liquidity information, in order to facilitate management by ICC of liquidity risk from settlement arrangements. This would include providing information as to the bank's liquidity coverage ratio, and if that is not reported by the bank, ICC would use other criteria (e.g., requesting a description of the bank's liquidity risk management policy and/or requesting the liquidity coverage ratio of the bank's affiliated reporting entity within the bank's group) based on ICC's discretion, to assess the liquidity risks arising from settlement banks. In addition, as revised, the Treasury Policy would no longer specify particular backup settlement banks for ICC but reference a general requirement for ICC to maintain appropriate backup relationships. ICC believes this approach is preferable and avoids the need to amend the Treasury Policy if backup arrangements change.

The amendments would add further description of the daily settlement process (including as to cases where no net settlement is owed and bank holidays), as set forth below. Consistent with the added description of the direct settlement model as noted above, the amendments would state the responsibility of Clearing Participants to ensure that ICC timely receives all requested payments and note that failure to make timely payments may be a default. This proposed change provides greater clarity as to ICC's current practices. In the discussion of routine settlement procedures, an erroneous reference to contacting an agent bank in the event of a late payment would be removed (as the Clearing Participant would be contacted directly). The amendments would also add statements describing the daily settlement process as being conducted every business day and regarding the

timing of settlement finality under the direct settlement model. Consistent with current practice, settlement would be deemed final and irrevocable at the earlier of the time when ICC received the relevant payment, or a financial institution used by ICC sends a confirmation message that payment has been made. As noted above, the amendments would also remove references to various specific types of SWIFT messages (in light of the possibility that specific SWIFT message types may be modified, renamed or changed from time to time by SWIFT), and describe such messages more generally. In the case of non-routine settlement, the amendments would remove an unnecessary reference to a specific SWIFT settlement instruction, since ICC and the Clearing Participant in question would be expected to separately confirm the particulars of the settlement.

In the discussion of a SWIFT outage, the amendments would clarify that the relevant scenario arises where ICC is unable to send SWIFT messages to the Clearing Participants' settlement banks (correcting an erroneous reference to ICC's direct settlement banks). The amendments would revise certain procedures for communicating directly with CP's in the event of a SWIFT outage (removing an incorrect reference to communicating with ICC's direct settlement banks as above). The amendments would also address correcting or re-issuing a SWIFT message in the event of a non-payment for certain technical reasons and remove certain references to specific types of SWIFT messages or reports that ICC believes are unnecessary, and such specific message types may be modified, renamed or changed from time to time (as noted above). The amendment would also remove a requirement that certain emails be password protected (as ICC does not believe email security measures need to be set out in the Treasury Policy). With respect to the discussion of bank-to-bank messages, the amendments would remove references to specific settlement banks and instead refer to the applicable ICC settlement bank generally (to avoid the need to amend the Treasury Policy in the event of any change in settlement banks). With respect to the scenario where a bank rejects a SWIFT debt message because of a technical defect, the amendments will remove a specific requirement to manually update the transaction summary report and manually initiate a specific reversal or correction message and add instead a

general obligation to correct the prior message or reissue a corrected message.

ICC proposes revisions to settlement bank failure sub-section of Section IV of the Treasury Policy.⁸ In the event that a settlement bank fails to perform, ICE Clear Credit would instruct the CP to wire the funds to the ICE Clear Credit accounts at an alternate settlement bank. The amendments broaden the list of such alternate settlement banks that may be designated by ICC.

In the discussion of ICC's use of the FRB Accounts for depository purposes, the amendments would update the Treasury Policy to reflect that ICC currently maintains separate FRB Accounts for house and client margin in light of applicable segregation requirements (removing and updating certain outdated language that contemplated a scenario where ICC might only have one FRB account). Other amendments in this section make non-substantive changes to the use of defined terms (including new terms House Account and Client Account as well as replacing FRB customer cash account and FRB House cash account with FRB House Account and replacing FRB Client cash account with FRB Client Account). Certain conforming changes would also be made to consistently refer to Guaranty Fund and House Accounts in this section.

Further, ICC proposes revisions to the custodial assets section of the Treasury Policy.⁹ The amendments would reference ongoing monitoring according to ICE Clear Credit's Counterparty Monitoring Procedures (rather than identifying only a specific annual report that is no longer required to be submitted as ICC Counterparty Monitoring Procedures contain detailed procedures regarding the monitoring of the operational capabilities of the custodial banks). Outdated language that contemplated a scenario where ICC might have only one FRB securities account has also been removed. Amendments would identify market risk management as well as liquidity risk management as goals of ICC's policies relating to acceptable forms of collateral and associated haircuts. Certain typographical and other non-substantive drafting changes would be made in the discussion of collateral valuation.

ICC proposes revisions to the collateral "haircut" sub-section of Section V of the Treasury Policy.¹⁰ The

⁸ Treasury Policy Section IV, Sub-Section "A.7. Failure of Settlement Bank to Perform."

⁹ Treasury Policy Section "V. Custodial Assets."

¹⁰ Treasury Policy Section V, Sub-Section "B.3. Collateral "Haircut" Methodology."

discussion of the collateral haircut methodology would be revised to refer to cash and non-cash collateral generally, rather than just US Treasuries and non-USD currencies (as the current list of eligible collateral is not limited to those specific assets). Other conforming non-substantive changes will be made consistent with the rest of the Treasury Policy. Amendments would also require that the Treasury Department provide a report of current haircuts to the ICC Risk Department at a minimum once a month (as opposed to only once a month) and require that the report be provided whether or not changes were made during the month. This approach reflects ICC's current practices. The amendments would also reflect current practice that haircuts are made publicly available, and any haircut changes are notified to CP's (and not only on a monthly basis). In the excess collateral sub-section, ICC proposes noting that requests by Clearing Participants to transfer excess collateral must be completed prior to 9:00 a.m. ET for both EUR and British pound sterling ("GBP") denominated collateral rather than only for EUR denominated collateral as this sub-section did not contain the applicable GBP deadline for the transfer of excess GBP denominated collateral.

In the section of the Treasury Policy relating to treasury management of client business,¹¹ various non-substantive drafting changes would be made, including to use the defined terms House Account, Client Account and Client Positions and Margin and conform references to various types of cash and non-cash collateral. An unnecessary reference to daily payment processes would also be removed.

ICC also proposes revisions to the treasury reconciliations section of the Treasury Policy.¹² As amended, the Treasury Policy will clarify that the Treasury Department conducts a daily reconciliation process for its cash and non-cash collateral accounts in accordance with its internal procedures, which include cite checks for validating status of margin payments, a check of prior-day cash balances, withdrawals, and/or deposits, and a comparison of current and expected balances. With respect to the cite checks description, ICC proposes to replace the vague and undefined phrase "ISG requests" with the generalized and descriptive phrase "transaction activity" to improve clarity.

Other amendments would correct the identification of ICC's SWIFT BIC code and update cross-references to ICC's Counterparty Monitoring Procedures (which was formerly referred to as the CDS Clearing Counterparty Monitoring Procedures).

ICC also proposes changes to Appendix 1: ICE Clear Credit Operating Capital Investment Policy. The amendments provide that the use of direct investments in US Treasury securities is not limited to cases where other investments (e.g., reverse repo investments) are unavailable; rather, the revised guidelines would contemplate the use of direct investments primarily for stable balances (such as amounts held for regulatory capital purposes). ICC believes the change provides greater flexibility for investment of such balances while preserving the credit quality of investments. Revisions to the guidelines for reverse repo investments in Appendix 2 would reflect that the value of collateral must be 102% of the invested amount (rather than within a range of 100.5% to 102%). This change reflects current market practice and provides greater protection to ICC. References to certain specific banks in key contacts in Appendix 2 also will be removed as unnecessary; ICC does not believe such contacts need to be maintained in the Treasury Policy, given the likelihood of changes in contact details.

ICC proposes a number of other drafting clarifications and conforming changes, such as updating names and uses of relevant defined terms, deleting outdated references and other non-substantive drafting improvements, would also be made throughout the Treasury Policy document. Various provisions and footnotes would also be relabeled or renumbered in the Treasury Policy.

(b) Statutory Basis

ICE Clear Credit believes that the proposed amendments to the Treasury Policy are consistent with the requirements of Section 17A of the Securities Exchange Act of 1934 (the "Act")¹³ and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act¹⁴ requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing

agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments are designed to generally improve the clarity of the Treasury Policy and make certain related enhancements, including clarifying the investment guidelines for investment of ICC's own capital, clarifications to the roles and responsibilities of the ICC Treasury Department function and clarifications concerning SWIFT messaging procedures. ICC believes the changes to the investment guidelines will facilitate stable investment of ICC's own capital and provide useful flexibility for the clearing house. The changes will not result in a change to current ICC Treasury Department practices. ICC therefore believes the amendments will help ensure that the Treasury Policy remain up-to-date and clearly articulate ICC's Treasury Department practices, and as such will promote the prompt and accurate clearance and settlement of securities transactions and derivatives agreements, contracts and transactions, contribute to the safeguarding of securities and funds which are in the custody or control of ICC or for which it is responsible, and generally promote the protection of investors and the public interest in the operation of clearing services, within the meaning of Section 17A(b)(3)(F) of the Act.¹⁵

The amendments also comply with relevant provisions of Rule 17Ad-22.¹⁶ In particular, Rule 17Ad-22(e)(5) provides that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable . . . [l]imit the assets it accepts as collateral to those with low credit, liquidity and market risks, and set and enforce appropriately conservative haircuts and concentration limits if [it] requires collateral to manage its or its participants' credit exposure, and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually."¹⁷ As set forth above, the amendments to the Treasury Policy would make clarifying changes to the responsibilities of the Treasury Department and procedures relating to the management of funds constituting operating capital as well as GF contributions and margin, banking relationships, and acceptable collateral and haircuts, among other matters. As such, the amendments would facilitate the ability of ICC to limit the assets it

¹¹ Treasury Policy Section "VI. Treasury Management for Client Business."

¹² Treasury Policy Section "VII. Treasury Reconciliations."

¹³ 15 U.S.C. 78q-1.

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 15 U.S.C. 78q-1(b)(3)(F).

¹⁶ 17 CFR 240.17Ad-22.

¹⁷ 17 CFR 240.17Ad-22(e)(5).

accepts as collateral to those with low credit, market and liquidity risks, consistent with the requirements of Rule 17Ad-22(e)(5).¹⁸

Rule 17Ad-22(e)(8) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.”¹⁹ The amendments would state clearly the time at which settlement of daily payments is deemed final, as the earlier of (i) when ICC receives the payment or (ii) when a financial institution used by ICC sends a relevant confirmation message that the payment has been made, which is consistent with ICC practice and is within the timeframe required under Rule 17Ad-22(e)(8).²⁰

Rule 17Ad-22(e)(9) requires that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] conduct its money settlements in central bank money, where available and determined to be practical . . . and minimize and manage credit and liquidity risk arising from conducting its monetary settlements in commercial bank money if central bank money is not used by the covered clearing agency.”²¹ As set forth above, the amendments make certain clarifications to the descriptions ICC’s settlement banking arrangements (through FRB accounts and with settlement banks) to more clearly reflect current practice by the clearing house. As such, in ICC’s view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(9).²²

Rule 17Ad-22(e)(16) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] safeguard the covered clearing agency’s own and its participants’ assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market and liquidity risks.”²³ As noted above, the amendments would provide greater flexibility for ICC to invest its own

capital through direct investments in US treasury securities, particularly in the case where it is investing stable balances. In that context, and given the maturity limitations that will nonetheless apply, ICC believes that such investments would have minimal credit, market and liquidity risks for ICC, and accordingly would be consistent with Rule 17Ad-22(e)(16).²⁴

Rule 17Ad-22(e)(3)(i) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency.”²⁵ The Treasury Policy is intended to assist ICC, among other matters, in accurately assessing and managing certain of its investment risks, collateral risks and liquidity risks relating to margin, GF and other assets held by ICC. As set forth above, the amendments are generally intended to update the Treasury Policy and make various drafting improvements for purposes of clarifications. In keeping the relevant policies up-to-date, ICC believes the amendments are consistent with the risk management requirements of Rule 17Ad-22(e)(3)(i).²⁶

Rule 17Ad-22(e)(2) provides that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] [p]rovide for governance arrangements that are [c]lear and transparent”²⁷ and “[s]pecify clear and direct lines of responsibility.”²⁸ As proposed to be revised, the Treasury Policy would clearly state certain responsibilities of the Treasury Department, among other parts of ICC, in relation to oversight of its practices regarding treasury functions and collateral management. The amendments would make certain clarifications and drafting improvements that will keep these aspects of the Treasury Policy up-to-date and effective for their purposes. In ICE Clear Credit’s view, the amendments to the Treasury Policy are therefore consistent with the requirements of Rule 17Ad-22(e)(2).²⁹

(B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update and clarify the Treasury Policy. As set forth above, the proposed amendments are not expected to materially change the treasury operations of ICC but rather update general language to more clearly describe existing practices. Accordingly, ICE Clear Credit does not believe the amendments would affect the rights and obligations of CP’s or the costs of clearing, the ability of market participants to access clearing, or the market for clearing services generally. Therefore, ICE Clear Credit does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

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 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-regulations/self-regulatory-organization-rulemaking>); or

¹⁸ 17 CFR 240.17Ad-22(e)(5).

¹⁹ 17 CFR 240.17Ad-22(e)(8).

²⁰ 17 CFR 240.17Ad-22(e)(8).

²¹ 17 CFR 240.17Ad-22(e)(9).

²² 17 CFR 240.17Ad-22(e)(9).

²³ 17 CFR 240.17Ad-22(e)(16).

²⁴ 17 CFR 240.17Ad-22(e)(16).

²⁵ 17 CFR 240.17 Ad-22(e)(3)(i).

²⁶ 17 CFR 240.17 Ad-22(e)(3)(i).

²⁷ 17 CFR 240.17 Ad-22(e)(2)(i).

²⁸ 17 CFR 240.17 Ad-22(e)(2)(v).

²⁹ 17 CFR 240.17 Ad-22(e)(2).

• Send an email to rule-comments@sec.gov. Please include file number SR-ICC-2024-005 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-ICC-2024-005. 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-regulations/self-regulatory-organization-rulemaking>). 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 such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

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-ICC-2024-005 and should be submitted on or before October 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Vanessa A. Countryman,
Secretary.

[FR Doc. 2024-20460 Filed 9-10-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35315; File No. 812-15498]

Great Elm Capital Corp., et al.

September 6, 2024.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the "Act") and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies ("BDCs") and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: Great Elm Capital Corp., Great Elm Capital Management, Inc., Great Elm Opportunities Fund I, L.P.—Series A, Great Elm Opportunities Fund I, L.P.—Series D, Great Elm Investments, LLC and Great Elm Credit Income Fund, LLC.

Filing Dates: The application was filed on August 18, 2023 and amended on December 4, 2023, March 7, 2024 and August 29, 2024.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on October 1, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at Secretaries-Office@sec.gov.

ADDRESSES: The Commission: Secretaries-Office@sec.gov. Applicants:

Adam M. Kleinman, akleinman@greatelmcap.com and Christopher Healey, christopher.healey@davispolk.com.

FOR FURTHER INFORMATION CONTACT:

Barbara T. Heussler, Senior Counsel, or Thomas Ahmadifar, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' third amended and restated application, dated August 29, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, <http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-20574 Filed 9-10-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20434 and #20435; MINNESOTA Disaster Number MN-20003]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Minnesota

AGENCY: Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA-4797-DR), dated 06/28/2024.

Incident: Severe Storms and Flooding.
Incident Period: 06/16/2024 through 07/04/2024.

DATES: Issued on 08/27/2024.

Physical Loan Application Deadline Date: 09/26/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 03/28/2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

³⁰ 17 CFR 200.30-3(a)(12).

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 06/28/2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 09/26/2024. This notice is further amended to include the following areas as adversely affected by the disaster.

Primary Counties: Houston, Sibley.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–20512 Filed 9–10–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12532; No. 2024–08]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (“the Act”), and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 20, 1994, I hereby determine that the representative offices and operations in the United States of Sputnik, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of Sputnik and its agents or employees acting on its behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above-named entity's activities in the United States.

Rebecca E. Gonzales,

Director, Office of Foreign Missions, Department of State.

[FR Doc. 2024–20520 Filed 9–10–24; 8:45 am]

BILLING CODE 4711–11–P

DEPARTMENT OF STATE

[Public Notice: 12533; No. 2024–07]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign

Missions Act, 22 U.S.C. 4301, *et seq.* (“the Act”), and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 20, 1994, I hereby determine that the representative offices and operations in the United States of Ruptly, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of Ruptly and its agents or employees acting on its behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above-named entity's activities in the United States.

Rebecca E. Gonzales,

Director, Office of Foreign Missions, Department of State.

[FR Doc. 2024–20513 Filed 9–10–24; 8:45 am]

BILLING CODE 4711–11–P

DEPARTMENT OF STATE

[Public Notice: 12529; No. 2024–05]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (“the Act”), and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 20, 1994, I hereby determine that the representative offices and operations in the United States of RT (formerly “Russia Today”), including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of RT and its agents or employees acting on its behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above-named entity's activities in the United States.

Rebecca E. Gonzales,

Director, Office of Foreign Missions, Department of State.

[FR Doc. 2024–20516 Filed 9–10–24; 8:45 am]

BILLING CODE 4711–11–P

DEPARTMENT OF STATE

[Public Notice: 12527; No. 2024–04]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (“the Act”), and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 20, 1994, I hereby determine that the representative offices and operations in the United States of RIA Novosti, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of RIA Novosti and its agents or employees acting on its behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above-named entity's activities in the United States.

Rebecca E. Gonzales,

Director, Office of Foreign Missions, Department of State.

[FR Doc. 2024–20517 Filed 9–10–24; 8:45 am]

BILLING CODE 4711–11–P

DEPARTMENT OF STATE

[Public Notice: 12530]

No. 2024–06

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (“the Act”), and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 20, 1994, I hereby determine that the representative offices and operations in the United States of TV–Novosti, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of TV–Novosti and its agents or employees acting on its behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions

relating to the above-named entity's activities in the United States.

Rebecca E. Gonzales,

*Director, Office of Foreign Missions,
Department of State.*

[FR Doc. 2024–20518 Filed 9–10–24; 8:45 am]

BILLING CODE 4711–11–P

DEPARTMENT OF STATE

[Public Notice: 12528; No. 2024–03]

Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State under the Foreign Missions Act, 22 U.S.C. 4301, *et seq.* (“the Act”), and delegated pursuant to Department of State Delegation of Authority No. 214, dated September 20, 1994, I hereby determine that the representative offices and operations in the United States of Rossiya Segodnya, including their real property and personnel, are a foreign mission within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices and operations in the United States of Rossiya Segodnya and its agents or employees acting on its behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above-named entity's activities in the United States.

Rebecca E. Gonzales,

*Director, Office of Foreign Missions,
Department of State.*

[FR Doc. 2024–20515 Filed 9–10–24; 8:45 am]

BILLING CODE 4711–11–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21121]

Student Transportation of America, Inc. et al.—Acquisition of Control—West Point Tours, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: On August 12, 2024, Student Transportation of America, Inc. (STA), a noncarrier, and its parent entities (collectively, Applicants) filed an application seeking authority for STA to acquire all voting securities of West Point Tours, Inc. (WPT), a passenger motor carrier that holds operating authority issued by the Federal Motor Carrier Safety Administration (FMCSA). The Board is tentatively approving and

authorizing the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by October 28, 2024. If any comments are filed, Applicants may file a reply by November 12, 2024. If no opposing comments are filed by October 28, 2024, this notice shall be effective on October 29, 2024.

ADDRESSES: Comments, referring to Docket No. MCF 21121, may be filed with the Board either via e-filing on the Board's website or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, send one copy of comments to STA's representative: Mark J. Andrews, Clark Hill PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Brian O'Boyle at (202) 245–0364. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: According to the application, STA is a New Jersey-based noncarrier that controls multiple passenger motor carriers that hold operating authorities issued by the FMCSA.¹ STA is a subsidiary of Student Transportation of America Holdings, Inc. (STA Holdings), a Delaware corporation and noncarrier. STA Holdings, in turn, is a subsidiary of Spinner US Acquireco, Inc. (Spinner),² also a Delaware corporation and noncarrier, which will remain under the majority ownership of Caisse de dépôt et placement du Québec, a pension fund based in the Canadian province of Quebec. (Appl. 5.) Applicants state that the carriers STA controls primarily provide school bus transportation under contract with local school districts, a service that they state is covered by broad exemptions from FMCSA regulation. (*Id.* at 2.)³ According to Applicants, STA and its subsidiaries currently have approximately 23,000 employees, utilize an estimated 22,000 vehicles, and transport approximately 1.25 million students per day based on a 180-day school year. (Appl. 4.) Applicants state that while exempt

¹ Additional information about the carriers controlled by STA, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in Exhibit B of the application.

² Further information about Spinner's corporate structure and ownership can be found in Exhibit A of the application.

³ See 49 U.S.C. 13506(a)(1) (exempting from both Department of Transportation and Board jurisdiction “a motor vehicle transporting only school children and teachers to or from school”).

school transportation accounts for approximately 97% of STA's approximately \$1.3 billion in annual revenues, remaining revenues are generated from use of its vehicles for charter and special operations not involving the transportation of students to and from schools. (*Id.* at 2, 4.)

According to the application, WPT is a New York state-based carrier that holds FMCSA operating authority as well as intrastate operating authorities in New York state and Pennsylvania. (*Id.* at 3.) Like STA's carrier subsidiaries, WPT primarily provides school bus transportation under contracts with local school districts. (*Id.* at 2–3.) WPT transports approximately 9,640 students per day during the school year, employs approximately 200 drivers, and has a fleet of 220 vehicles, consisting primarily of school buses but also approximately 15 motor coaches. (*Id.* at 4.) The application states that WPT generates annual revenues of approximately \$21 million, about 75% of which are derived from school-related transportation, with the remainder being derived from charter and special operations centered on the West Point Military Academy and nearby areas of the Hudson River Valley in New York state. (*Id.*) WPT's interstate motorcoach operations carry approximately 24,000 passengers annually. (*Id.*)

Pursuant to an agreement executed on July 17, 2024, STA will acquire all voting securities of WPT. (*Id.* at 2, 4.) Upon closing of the proposed transaction, WPT will become a direct subsidiary of STA. (*Id.* at 5.) STA and WPT expect to close the proposed acquisition in the fourth quarter of 2024. (*Id.* at 4.)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges that result from the proposed transaction, and (3) the interest of affected carrier employees. Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), see 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of STA and WPT exceeded \$2 million during the 12-month period immediately preceding the filing of the application, see 49 CFR 1182.2(a)(5). (See Appl. 6–7.)

Applicants assert that the transaction is consistent with the public interest. Applicants state that STA's operating subsidiaries and WPT have contractual obligations to provide outsourced transportation services and a competitive incentive to maintain and improve existing services because doing so enhances their chances of success when new outsourcing opportunities arise or when existing contracts are re-competed. (*Id.*) According to Applicants, contract renewals in the school transportation sector often involve highly visible and intense negotiation processes between multiple bidders, governmental bodies, unions, political activists and other interested parties. (*Id.* at 6.) Thus, Applicants claim that STA will have "strong incentives to maintain high service levels in order to fend off competitive bids" from other bus transportation providers. (*Id.*) Applicants also note that STA's operating subsidiaries will face competition from school districts and local government entities that can provide bus transportation "in-house." (*Id.*)

With respect to fixed charges, Applicants state that there are no current plans to finance the proposed acquisition in a manner that would affect fixed charges payable by STA or its affiliates. (*Id.*) Applicants further note that funding for the transaction "will be drawn from STA's current credit facility, and WPT (like other STA subsidiaries) will become a co-obligor under that facility." (*Id.*)

Regarding the effect of the acquisition on current employees, Applicants state that it is highly unlikely that any employees of WPT would be adversely affected to any significant degree by the proposed transaction. (*Id.* at 7.) They again emphasize STA and WPT's contractual obligations and competitive incentives to maintain and improve existing services, and claim that STA and WPT "do not have, and rationally could not have, any intention of significantly reducing employment levels involving drivers, dispatchers or vehicle maintenance personnel" as a result of the acquisition. (*Id.*) Applicants further state that there is a "longstanding shortage of qualified drivers and maintenance personnel," and assert that STA continues to actively recruit additional employees. (*Id.*)

Based on Applicants' representations, the Board finds that the acquisition as proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be

deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6. If no opposing comments are filed by expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at www.stb.gov.

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective October 29, 2024, unless opposing comments are filed by October 28, 2024. If any comments are filed, Applicants may file a reply by November 12, 2024.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: September 5, 2024.

By the Board, Board Members Fuchs, Hedlund, Primus, and Schultz.

Regena Smith-Bernard,
Clearance Clerk.

[FR Doc. 2024-20421 Filed 9-10-24; 8:45 am]

BILLING CODE 4915-01-P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from Page, Scrantom, Sprouse, Tucker & Ford, P.C on behalf of the Consolidated Government of Columbus, Georgia (WB24-45—9/4/24) for permission to use select data from the Board's 2022 unmasked Carload Waybill Samples. A copy of this request may be obtained from the Board's website under docket no. WB24-45.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice.

The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245-0319.

Eden Besera,

Clearance Clerk.

[FR Doc. 2024-20424 Filed 9-10-24; 8:45 am]

BILLING CODE 4915-01-P

SUSQUEHANNA RIVER BASIN COMMISSION

Minor Modification Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the minor modifications approved for previously approved projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax (717) 238-2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists previously approved projects, receiving approval of minor modification, described below, pursuant to 18 CFR 806.18 or to Commission Resolution Nos. 2013-11 and 2015-06, for the time period specified above.

1. Department of the Army—Carlisle Barracks Golf Course, Docket No. 20240622, North Middleton and Middlesex Townships, Cumberland County, Pa.; modification approval to adjust the approval term to align with another docket approval by the Commission; Approval Date: August 6, 2024.

Authority: Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: September 6, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024-20579 Filed 9-10-24; 8:45 am]

BILLING CODE 7040-01-P

**SUSQUEHANNA RIVER BASIN
COMMISSION****Grandfathering Registration Notice**

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR part 806, subpart E, for the time period specified above:

1. Ahlstrom Filtration LLC, GF Certificate No. GF–202408279, Mount Holly Springs Borough, Cumberland County, Pa.; consumptive use; Issue Date: August 27, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: September 6, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–20577 Filed 9–10–24; 8:45 am]

BILLING CODE 7040–01–P

**SUSQUEHANNA RIVER BASIN
COMMISSION****Projects Approved for Consumptive
Uses of Water**

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717)

238–2436; email: joyler@srbc.net. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Water Source Approval—Issued Under 18 CFR 806.22(f):

1. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Deer Park; ABR–201907003.R1; Windham Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 8, 2024.

2. RENEWAL—Coterra Energy Inc.; Pad ID: CraneJ P1; ABR–201907002.R1; Lathrop Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 8, 2024.

3. RENEWAL—Blackhill Energy LLC; Pad ID: Gerbino #1; ABR–20090710.R3; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 17, 2024.

4. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: White SUS; ABR–201407008.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 17, 2024.

5. RENEWAL—EQT ARO LLC; Pad ID: COP Tract 653 Pad A; ABR–20090405.R3; Beech Creek Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 17, 2024.

6. RENEWAL—EQT ARO LLC; Pad ID: COP Tract 653 Pad B; ABR–20090414.R3; Beech Creek Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 17, 2024.

7. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Kent; ABR–20090726.R3; Towanda Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2024.

8. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: McDonough; ABR–201407009.R2; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2024.

9. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: SGL–12 A Drilling Pad; ABR–201407007.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 19, 2024.

10. Pennsylvania General Energy Company, L.L.C.; Pad ID: COP Tract 726 Pad A; ABR–202408001; Plunketts

Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 25, 2024.

11. RENEWAL—Blackhill Energy LLC; Pad ID: Warren #1; ABR–20090711.R3; Ridgebury Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 25, 2024.

12. RENEWAL—EQT ARO LLC; Pad ID: Larrys Creek F&G Pad A; ABR–20090411.R3; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 25, 2024.

13. RENEWAL—EQT ARO LLC; Pad ID: Larrys Creek F&G Pad B; ABR–20090416.R3; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 25, 2024.

14. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 7H; ABR–20090722.1.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 25, 2024.

15. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Hershberger; ABR–20090739.R3; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 26, 2024.

16. RENEWAL—Inflection Energy (PA) LLC; Pad ID: Hamilton Well Site; ABR–201403010.R2; Upper Fairfield Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 26, 2024.

17. RENEWAL—Seneca Resources Company, LLC; Pad ID: J. Pino Pad G; ABR–20090717.R3; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 29, 2024.

18. RENEWAL—Seneca Resources Company, LLC; Pad ID: PHC 8H; ABR–20090723.1.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 29, 2024.

19. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Claudia; ABR–20090807.R3; Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 30, 2024.

20. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Eileen; ABR–20090806.R3; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 30, 2024.

21. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Fitzsimmons; ABR–20090809.R3; Albany Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 30, 2024.

22. RENEWAL—Chesapeake Appalachia, L.L.C.; Pad ID: Hunter; ABR–201408001.R2; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 30, 2024.

23. RENEWAL—Seneca Resources Company, LLC; Pad ID: CRV Pad C09–G; ABR–201408002.R2; Shippen Township, Cameron County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 30, 2024.

24. RENEWAL—Seneca Resources Company, LLC; Pad ID: T. Wivell Horizontal Pad; ABR–20090814.R3; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 30, 2024.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: September 6, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–20578 Filed 9–10–24; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2024–0221]

Commercial Driver's License: The Hawaii Department of Transportation (HDOT); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that the Hawaii Department of Transportation (HDOT) has applied for a limited exemption from the commercial driver's license (CDL) rules concerning acceptable proof of citizenship or lawful permanent residency for citizens of Freely Associated States (FAS) who now reside in Hawaii and wish to obtain a CDL. The FAS are the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. If the exemption is granted, HDOT would be allowed to issue standard commercial learner permits (CLPs) and CDLs to FAS citizens, rather than issuing non-domiciled CLPs and CDLs. FMCSA requests public comment on the applicant's request and on the question of whether FMCSA should grant the exemption to all State Driver's Licensing Agencies (SDLAs).

DATES: Comments must be received on or before October 11, 2024.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA–2024–0221 by any of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Each submission must include the Agency name and the docket number (FMCSA–2024–0221) for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: If you do not have access to the internet, you may view the docket by visiting Docket Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

Privacy Act: In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, 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 <https://www.transportation.gov/privacy>. The comments are posted without edit and are searchable by the name of the submitter.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 385–2415; Bernadette.walker@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2024–0221), indicate the specific section of this document to which the comment applies, and provide a reason for your suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number “FMCSA–2024–0221” in the “Keyword” box, and click “Search.” When the new screen appears, click on the “Comment” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI

should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including the applicant's safety analyses.

The Agency must provide an opportunity for public comment on the request. The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)). If granted, the notice will identify the regulatory provision(s) from which the applicant will be exempt, the effective period, and all terms and conditions of the exemption (49 CFR 381.315(c)(1)). If the exemption is denied, the notice will explain the reasons for the denial (49 CFR 381.315(c)(2)).

III. Background

Under 49 CFR 383.71(b), an SDLA may issue a CDL or CLP only to an applicant who presents proof of United States citizenship or lawful permanent residency. If the applicant cannot present this proof, then the SDLA may issue the applicant a non-domiciled CDL or CPL instead, under 49 CFR 383.71(f). Thus, under 49 CFR 383.71, a citizen of an FAS, who is not a lawful permanent resident, is not eligible for a CDL or CLP and may be issued only non-domiciled credentials.

The United States' relationships with the FAS are governed by agreements known as Compacts of Free Association (COFA). Under these agreements, citizens of the FAS may enter the United States as nonimmigrants, and, without obtaining a visa, they may

remain in and work in the country indefinitely.¹

Under the "REAL ID Act of 2005"² and its accompanying regulation promulgated by the Department of Homeland Security (DHS) at 6 CFR part 37,³ REAL ID compliant States are permitted to issue REAL ID compliant driver's licenses and identification cards to certain individuals with nonimmigrant status. However, under 6 CFR 37.21(b)(1), if individuals have no end date to their authorized stay in the country, then the license or ID that is issued is valid for a maximum of one year. Because citizens of the FAS may remain in the country indefinitely, these individuals at first could be issued REAL ID driver's licenses and ID cards lasting only one year.⁴

Subsequently, Congress enacted a modifying statute entitled the "REAL ID Act Modification for Freely Associated States Act,"⁵ and DHS issued a corresponding amendment to its regulation. These changes permitted compliant States to issue full-term REAL ID licenses and ID cards to citizens of the FAS. When issuing this regulatory amendment, DHS also modified the identification documents that citizens of the FAS may present when applying for a REAL ID driver's license or ID card from a compliant State.⁶ Under its authority in 6 CFR 37.11(c)(1)(x), DHS stated that complying States may accept "a valid unexpired passport issued by the Republic of the Marshall Islands, the Republic of Palau, or the Federated States of Micronesia with an approved Form I–94 . . . documenting the applicant's most recent admission to the United States under the Compact of Free Association between the United States and the nation that issued the passport." DHS further stated that its allowance of these documents was "consistent with the intent of Congress."⁷

Applicant's Request

HDOT seeks an exemption from the CDL "List of Acceptable Proofs of Citizenship or Lawful Permanent Residency" requirements in Table 1 to 49 CFR 383.71 for citizens of the FAS. HDOT cited in its application the REAL ID Act Modification for Freely Associated States Act, and the amended DHS regulations ensuring that citizens

of the FAS residing in the United States are eligible for full-term REAL ID licenses and identification cards.

According to HDOT, "citizens of the Freely Associated States are able to meet the domicile requirement described in [49 CFR] 383.71(b)(10)" and noted that "the [COFAs] provide for citizens of the Freely Associated States to reside and work indefinitely within the United States."

HDOT requests that FMCSA grant the proposed exemption and authorize it to issue CDLs and CLPs to citizens of the FAS in accordance with State procedures in 49 CFR 383.73(a) and (b). Ordinarily, a person who is not a United States citizen must present a valid, unexpired Permanent Resident Card. For a person who is a citizen of an FAS, HDOT would instead accept a valid, unexpired passport issued by an FAS and an Arrival/Departure Record, meaning an I–94 or I–94A form, to prove that the individual has entered the United States lawfully.

FMCSA also requests public comment on whether the exemption, if granted, should apply to all SDLAs.

A copy of the HDOT's application for exemption is available for review in the docket for this notice.

IV. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on HDOT's application for an exemption from the requirement in Table 1 to 49 CFR 383.71 for citizens of the FAS. FMCSA also requests public comment and on the question of whether, if granted, the exemption should apply to all SDLAs, and not just HDOT. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–20613 Filed 9–10–24; 8:45 am]

BILLING CODE 4910–EX–P

¹ See H. Rept. 115–945.

² Public Law 109–13, Div. B, 119 Stat. 302, May 11, 2005.

³ See 73 FR 5272 (January 29, 2008).

⁴ See 84 FR 46423 (September 4, 2019).

⁵ Public Law 115–323, 132 Stat. 4443, Dec. 17, 2018.

⁶ See 84 FR 46556 (September 4, 2019).

⁷ Id.

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****[Docket No. FMCSA–2024–0208]****Notice of Review of Guidance**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Regulatory guidance; notice of review of guidance; extension of comment period.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) extends the comment period for its August 13, 2024, notice of review of guidance requesting public comment identifying and providing input on existing guidance documents that are good candidates for revision or rescission. FMCSA extends the comment period for 14 days until September 26, 2024.

DATES: The comment period for the notice of review of guidance published August 13, 2024, at 89 FR 65968, is extended. Comments should be received on or before September 26, 2024. FMCSA will consider late-filed comments as part of this review to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Winkle, Attorney-Advisor, Office of Chief Counsel, FMCSA, 1200 New Jersey Ave. SE, Washington, DC 20590–0001; 202–366–5257; anna.winkle@dot.gov.

SUPPLEMENTARY INFORMATION:**I. Public Participation and Request for Comments**

Instructions and additional information concerning submitting comments may be viewed under the **ADDRESSES** heading and in section I of the **SUPPLEMENTARY INFORMATION** heading in the August 13, 2024, notice of review of guidance at 89 FR 65968–65969.

II. Background

FMCSA published a notice of review of guidance on August 13, 2024, with a comment deadline of September 12, 2024 (89 FR 65968). That notice sought written input from the public on all FMCSA guidance documents that are good candidates for revision or rescission as part of its regular review of guidance documents under Section 5203(c) of the Fixing America's Surface Transportation Act. The public was encouraged to identify guidance documents that: (1) are inconsistent or unclear; (2) may not be conducive to uniform or consistent enforcement; or (3) are no longer necessary.

On August 26, 2024, CVSA filed a comment requesting a 60-day extension of the comment period (<https://www.regulations.gov/comment/FMCSA-2024-0208-0007>). CVSA notes that 30 days is not an adequate amount of time to provide substantive, meaningful feedback to the agency on the more than 1,300 individual guidance documents in FMCSA's Guidance Portal. While granting a two-week extension to the comment period, FMCSA notes that public comments on any FMCSA guidance document may be provided at any time.¹

The comment period for the notice of review of guidance is scheduled to close on September 12, 2024. FMCSA believes it is in the public interest to allow for public comment for an extended period. Accordingly, FMCSA extends the comment period for all comments on FMCSA's existing guidance documents for 14 days, until September 26, 2024.

Larry W. Minor,

Associate Administrator, Office of Policy.

[FR Doc. 2024–20596 Filed 9–10–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Quarterly Publication of Individuals Who Have Chosen To Expatriate: Correction**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction notice.

SUMMARY: This document contains corrections to a publication of the Quarterly Publication Of Individuals Who Have Chosen To Expatriate in accordance with IRC Section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended that was published in the **Federal Register** on January 29, 2024.

FOR FURTHER INFORMATION CONTACT: Steven B. Levine 737–800–7543 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

The publication of the Quarterly Publication Of Individuals Who Have Chosen To Expatriate for the fourth quarter of 2023 is required by IRC

¹ As stated on the homepage of FMCSA's Guidance Portal (<https://www.fmcsa.dot.gov/guidance>), “[t]o comment on any guidance document, or to request issuance, reconsideration, modification, or rescission of any guidance document, please identify the guidance document in your request and send it to: FMCSAguidance@dot.gov.”

section 6039G of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as amended, is the subject of this correction is under section 6039(G) of the Internal Revenue Code.

Correction of Publication

Accordingly, FR Doc. 2024–01648, the publication of the Quarterly Publication Of Individuals Who Have Chosen To Expatriate for the fourth quarter of 2023, appearing on page 5606 in the **Federal Register** on Monday, January 29, 2024, is corrected on page 5606, in the third column, the sixth through eighth lines of the first partial paragraph are corrected to read “whom the Secretary received information during the quarter ending December 31, 2023. For purposes of”.

Oluwafunmilayo A. Taylor,

Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2024–20543 Filed 9–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****Proposed Collection; Requesting Comments on Tax-Exempt Organization Forms**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning forms used by tax-exempt organizations. See Appendix A for a list of forms, schedules, and related attachments.

DATES: Written comments should be received on or before November 12, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545–0047 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha Brinson

(202) 317-5753, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION: These are forms used by tax-exempt organizations. These include Forms 990, 990-EZ, 990-N, 990-PF, 990-T, and related forms and schedules tax-exempt organizations attach to their returns (see appendix-A to this notice). In addition, there are numerous Treasury Decisions and guidance documents that are covered by the burden estimate provided in this notice. See appendix B for a list.

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-

optimal choices related to tax deductions or credits, or psychological costs.

Proposed PRA Submission to OMB

Title: U.S. Tax-Exempt Organization Return

OMB Number: 1545-0047.

Form Numbers: Forms 990, 990-EZ, 990-N, 990-PF, 990-T, and all other related forms, schedules, and attachments. (see appendix-A to this notice).

Abstract: These forms and schedules are used to determine that tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption. The data is also used for general statistical purposes.

Current Actions: There have been changes in IRS guidance documents and regulations related to various forms approved under this approval package during the past year. There have been additions of forms included in this approval package. It is anticipated that these changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of this notice. These estimated figures are

expected to be available by the release of the 30-day comment notice from OMB. This approval package is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Tax-Exempt Organizations.

Preliminary Estimated Number of Respondents: 1,684,600.

Preliminary Estimated Time per Respondent (Hours): 44 hours, 10 minutes.

Preliminary Estimated Total Annual Time (Hours): 74,400,000.

Preliminary Estimated Total Annual Monetized Time (\$): 3,828,000,000.

Preliminary Estimated Total Out-of-Pocket Costs (\$): 1,938,600,000.

Preliminary Estimated Total Monetized Burden (\$): 5,766,600,000.

Note: Total Monetized Burden = Total Out-of-Pocket Costs + Total Monetized Time.

Note: Amounts below are estimates for Fiscal Year (FY) 2025. Reported time and cost burdens are national averages and do not necessarily reflect a "typical case." Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

ICB ESTIMATES FOR THE 990 SERIES OF RETURNS AND SUPPORTING FORMS AND SCHEDULES [FY2025]

	FY24	Program change due to adjustment	FY25
Number of Respondents	1,698,500	(13,900)	1,684,600
Burden in Hours	75,500,000	(1,100,000)	74,400,000
Monetized Time Burden	\$3,903,700,000	(\$75,700,000)	\$3,828,000,000
Out-of-Pocket Costs	\$1,978,400,000	(\$39,800,000)	\$1,938,600,000
Total Monetized Burden	\$5,882,100,000	(\$115,500,000)	\$5,766,600,000

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 4, 2024.

Martha R. Brinson,
Tax Analyst.

Appendix-A

Product	Title
Form T	TIMBER.
1023	Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1023-EZ	Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
1024	Application for Recognition of Exemption Under Section 501(a).

Product	Title
1024-A	Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code.
1028	Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.
1116 Sch B	Foreign Tax Carryover Reconciliation Schedule.
1116 Sch C	Foreign Tax Redeterminations.
1116	Foreign Tax Credit.
1120-POL	US Income Tax Return for Certain Political Organizations.
1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
1128	Application to Adopt, Change, or Retain a Tax Year.
2220	Underpayment of Estimated Tax by Corporations.
2848	Power of Attorney and Declaration of Representative.
3115	Application for Change in Accounting Method.
3468	Investment Credit.
3800	General Business Credit.
4136	Credit for Federal Tax Paid on Fuels.
4255	Recapture of Investment Credit.
4562	Depreciation and Amortization.
461	Limitation on Business Loss.
4720	Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code.
4797	Sale of Business Property.
5227	Split Interest Trust Information Return.
5471 Sch E	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
5471 Sch G-1	Cost Sharing Arrangement.
5471 Sch H	Current Earnings and Profits.
5471 Sch I-1	Information for Global Intangible Low-Taxed Income.
5471 Sch J	Accumulated Earnings & Profits (E&P) of Controlled Foreign Corporation.
5471 Sch M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 Sch O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
5471 Sch P	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
5471 Sch Q	CFC Income by CFC Income Groups.
5471 Sch R	Distributions From a Foreign Corporation.
5471	Information Return of U.S. Persons With Respect to Certain Foreign Corporations.
5578	Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.
5884-C	Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans.
5884-D	Employee Retention Credit for Certain Tax-Exempt Organizations Affected by Qualified Disasters.
6069	Return of Certain Excise Taxes on Mine Operators, Black Lung Trusts, and Other Persons Under Sections 4951, 4952, and 4953.
6198	At-Risk Limitations.
6497	Information Return of Nontaxable Energy Grants or Subsidized Energy Financing.
7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
7203	S Corporation Shareholder Stock and Debt Basis Limitations.
7204	Consent to Extend the Time to Assess Tax Related to Contested Foreign Income Taxes—Provisional Foreign Tax Credit Agreement.
7205	Energy Efficient Commercial Buildings Deduction.
7207	Advanced Manufacturing Production Credit.
7210	Clean Hydrogen Production Credit.
7213	Nuclear Power Production Credit.
7217	Distributions From a Partnership of Property With Partner Basis Adjustments.
7218	Clean Fuel Production Credit.
8038	Information Return for Tax-Exempt Private Activity Bond Issues.
8038-B	Information Return for Build America Bonds and Recovery Zone.
8038-CP	Return for Credit Payments to Issuers of Qualified Bonds.
8038-CP Schedule A	Specified Tax Credit Bonds Interest Limit Computation.
8038-G	Information Return for Tax-Exempt Governmental Bonds.
8038-GC	Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.
8038-R	Request for Recovery of Overpayments Under Arbitrage Rebate Provisions.
8038-T	Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.
8038-TC	Information Return for Tax Credit Bonds and Specified Tax Credit Bonds.
8282	Donee Information Return.
8283	Noncash Charitable Contributions.
8283-V	Payment Voucher for Filing Fee Under Section 170(f)(13).
8328	Carryforward Election of Unused Private Activity Bond Volume Cap.
8330	Issuer's Quarterly Information Return for Mortgage Credit Certificates (MCCs).
8453-TE	Tax Exempt Entity Declaration and Signature for Electronic Filing.
8453-X	Political Organization Declaration for Electronic Filing of Notice of Section 527 Status.
8621	Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8718	User Fee for Exempt Organization Determination Letter Request.
8824	Like-Kind Exchanges.
8826	Disabled Access Credit.
8835	Renewable Electricity Production Credit.
8838	Consent to Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.
8865 Sch G	Statement of Application of the Gain Deferral Method under Section 721(c).
8865 Sch H	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721(c).
8865 Sch K-1	Partner's Share of Income Deductions Credits, etc.

Product	Title
8865 Sch K-2	Partners' Distributive Share Items—International.
8865 Sch K-3	Partner's Share of Income, Deductions, Credits, etc.—International.
8865 Sch O	Transfer of Property to a Foreign Partnership.
8865 Sch P	Acquisitions, Dispositions, and Changes of Interest in a Foreign Partnership.
8865	Return of U.S. Persons with Respect to Certain Foreign Partnerships.
8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8868	Application for Automatic Extension of Time To File an Exempt Organization Return.
8870	Information Return for Transfers Associated With Certain Personal Benefit Contracts.
8871	Political Organization Notice of Section 527 Status.
8872	Political Organization Report of Contributions and Expenditures.
8879-TE	IRS e-file Signature Authorization for a Tax Exempt Entity.
8886	Reportable Transaction Disclosure Statement.
8886-T	Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.
8899	Notice of Income From Donated Intellectual Property.
8911	Alternative Fuel Vehicle Refueling Property Credit.
8911 Sch A	Alternative Fuel Vehicle Refueling Property.
8933	Carbon Oxide Sequestration Credit.
8933 Sch A	Disposal or Enhanced Oil Recovery Owner Certification.
8933 Sch B	Disposal Operator Certification.
8933 Sch C	Enhanced Oil Recovery Operator Certification.
8933 Sch D	Recapture Certification.
8933 Sch E	Election Certification.
8933 Sch F	Utilization Certification.
8936	Clean Vehicle Credit.
8940	Request for Miscellaneous Determination.
8941	Credit for Small Employer Health Insurance Premiums.
8949	Sales and Other Dispositions of Capital Assets.
8976	Notice of Intent to Operate Under Section 501(c)(4).
8995	Qualified Business Income Deduction Simplified Calculation.
8995-A Schedule A	Specified Service Trades or Businesses.
8995-A Schedule B	Aggregation of Business Operations.
8995-A Schedule C	Loss Netting and Carryforward.
8995-A Schedule D	Special Rules for Patrons of Agricultural or Horticultural Cooperatives.
8995-A	Qualified Business Income Deduction.
926	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	Application to Use LIFO Inventory Method.
990	Return of Organization Exempt From Income Tax Under Section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations).
990 Schedule A	Public Charity Status and Public Support.
990 Schedule B	Schedule of Contributors.
990 Schedule C	Political Campaign and Lobbying Activities.
990 Schedule D	Supplemental Financial Statements.
990 Schedule E	Schools.
990 Schedule F	Statement of Activities Outside the United States.
990 Schedule G	Supplemental Information Regarding Fundraising or Gaming Activities.
990 Schedule H	Hospitals.
990 Schedule I	Grants and Other Assistance to Organizations, Governments, and Individuals in the United States.
990 Schedule J	Compensation Information.
990 Schedule K	Supplemental Information on Tax-Exempt Bonds.
990 Schedule L	Transactions With Interested Persons.
990 Schedule M	Noncash Contributions.
990 Schedule N	Liquidation, Termination, Dissolution, or Significant Disposition of Assets.
990 Schedule O	Supplemental Information to Form 990 or 990-EZ.
990 Schedule R	Related Organizations and Unrelated Partnerships.
990-EZ	Short Form Return of Organization Exempt From Income Tax Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations).
990-N	Form 990-N Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990-EZ.
990-PF	Return of Private Foundation or Section 4947(a)(1) Trust Treated as Private Foundation.
990-T	Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)).
990-T Schedule A	Unrelated Business Taxable Income From an Unrelated Trade or Business.
990-W	Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations (and on Investment Income for Private Foundations).

Appendix-B

Guidance	Title/description
Announcement 2004-38	Election of Alternative Deficit Reduction Contribution.
Announcement 2004-43	Election of Alternative Deficit Reduction Contribution.

Guidance	Title/description
Notice 2002–27	IRA Required Minimum Distribution Reporting.
Notice 2004–59	Plan Amendments Following Election of Alternative Deficit Reduction Contribution.
Notice 2005–41	Guidance Regarding Qualified Intellectual Property Contributions.
Notice 2006–105	Extension of Election of Alternative Deficit Reduction Contribution.
Notice 2006–107	Diversification Requirements for Qualified Defined Contribution Plans Holding Publicly Traded Employer Securities.
Notice 2006–109	Interim Guidance Regarding Supporting Organizations and Donor Advised Funds.
Notice 2007–70	Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes. Reporting requirements under Sec. 170(f)(12)(D).
Notice 2008–113	Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a) in Operation.
Notice 2009–26	Build America Bonds and Direct Payment Subsidy Implementation.
Notice 2009–31	Election and Notice Procedures for Multiemployer Plans under Sections 204 and 205 of WRERA.
Notice 2010–6	Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a).
Notice 2010–80	Modification to the Relief and Guidance on Corrections of Certain Failures of a Nonqualified Deferred Compensation Plan to Comply with § 409A(a).
Notice 2011–43	Transitional Relief under Internal Revenue Code § 6033(j) for Small Organizations.
Notice 2012–48	Tribal Economic Development Bonds.
Notice 2014–4	Interim Guidance Regarding Supporting Organizations.
Notice 2015–83	Tribal Economic Development Bonds: Use of Volume Cap for Draw-down Loans.
Notice 2017–9	De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties.
Notice 2021–56	Standards that an LLC must Satisfy to be Exempt.
Notice 2023–38	Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E.
Notice 2024–9	Statutory Exceptions to Phaseout Reducing Elective Payment Amounts for Applicable Entities if Domestic Content Requirements are Not Satisfied.
Notice 2024–41	Expansion of Applicable Projects for Safe Harbor in Notice 2023–38 and New Elective Safe Harbor to Determine Cost Percentages for Adjusted Percentage Rule.
Notice 97–45	Highly Compensated Employee Definition.
Publication 1075	Tax Information Security Guidelines for Federal, State and Local Agencies.
Publication 4839	Annual Form 990 Filing Requirements for Tax-Exempt Organizations (Forms 990, 990–EZ, 990–PF, 990–BL and 990–N (e-Postcard)).
Revenue Procedure 80–27	Group exemption letters.
Revenue Procedure 98–19	Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).
Revenue Procedure 2004–15	Waivers of Minimum Funding Standards.
Revenue Procedure 2008–62 and 2017–55	Substitute Mortality Tables for Single Employer Defined Benefit Plans.
Revenue Procedure 2009–43	Revocation of Elections by Multiemployer Defined Benefit Pension Plans to Freeze Funded Status under section 204 of WRERA.
Revenue Procedure 2010–52	Extension of the Amortization Period for Plan Sponsor of a Multiemployer Pension Plan.
Revenue Procedure 2014–11	Procedures for reinstating the tax-exempt status of organizations that have had their tax-exempt status automatically revoked under section 6033(j)(1) of the Internal Revenue Code (“Code”) for failure to file required Annual Returns or notices for three consecutive years.
Revenue Procedure 2014–40	Procedures for applying for and for issuing determination letters on the exempt status under § 501(c)(3) of the Internal Revenue Code (Code) using Form 1023–EZ, Streamlined Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
Revenue Procedure 2014–55	Election Procedures and Information Reporting with Respect to Interests in Certain Canadian Retirement Plans.
Revenue Procedure 2015–21	Rulings and determination letters.
Revenue Procedure 2016–27	Application Procedures for Approval of Benefit Suspensions for Certain Multiemployer Defined Benefit Pension Plans under § 432(e)(9).
Revenue Procedure 2017–43	Application Procedures for Approval of Benefit Suspensions for Certain Multiemployer Defined Benefit Pension Plans under § 432(e)(9).
Revenue Procedure 2017–57	Procedures for Requesting Approval for a Change in Funding Method.
Revenue Procedure 2018–4	Updating Procedures for Guidance on Matters Under IRS TE/GE Division.
Revenue Procedure 2018–38	Returns by exempt organizations and returns by certain non-exempt organizations.
Revenue Procedure 2021–37	Pre-Approved Pension Plans.
Revenue Procedure 2021–48	Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
Revenue Procedure 2022–14	List of Automatic Changes.
Revenue Procedure 2023–1	Rulings and Determination Letters.
Revenue Procedure 2023–4	Types of Advice Available to Taxpayers.
Revenue Procedure 2023–24	Changes in Accounting Periods and in Methods of Accounting.
Revenue Procedure 2023–38	Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E.
Revenue Procedure 2024–5	Rulings and Determination Letters.
Revenue Procedure 2024–23	Changes in Accounting Periods and in Methods of Accounting.
Revenue Ruling 2000–35	Automatic Enrollment in Section 403(b) Plans.
TD 7845	Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension and Other Plans.
TD 7852	Registration Requirements with Respect to Debt Obligations.
TD 7898	Employers Qualified Educational Assistance Programs.
TD 7952	Indian Tribal Governments Treated As States For Certain Purposes.
TD 8002	Substantiation of Charitable Contributions.
TD 8019	Public Inspection of Exempt Organization Return.

Guidance	Title/description
TD 8033	Tax Exempt Entity Leasing.
TD 8069	Qualified Conservation Contributions.
TD 8073	Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984.
TD 8086	Election for \$10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (LR-185-84 Final).
TD 8124	Time and Manner of Making Certain Elections Under the Tax Reform Act of 1986.
TD 8357	Certain cash or deferred arrangements (CODAs) and employee and matching contributions under employee plans.
TD 8376	Qualified Separate Lines of Business.
TD 8396	Regulations relating to a bank's determination of worthlessness of a debt.
TD 8400	Taxation of Gain or Loss from Certain Nonfunctional Currency Transactions (Section 988 Transactions).
TD 8476	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8540	Final regulations relating to the valuation of annuities, interests for life or terms of years, and remainder or reversionary interests.
TD 8619	Final regulations relating to eligible rollover distributions from tax-qualified retirement plans and section 403(b) annuities.
TD 8635	Nonbank Trustee Net Worth Requirements.
TD 8690	Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.
TD 8712	Definition of Private Activity Bonds.
TD 8718	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8769	Permitted Elimination of Pre-retirement Optional Forms of Benefit.
TD 8791	Guidance Regarding Charitable Remainder Trusts and Special Valuation Rules for Transfers of Interests in Trusts.
TD 8801	Arbitrage Restrictions on Tax-Exempt Bonds.
TD 8802	Certain Asset Transfers to a Tax-Exempt Entity.
TD 8814	Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans.
TD 8816	Roth IRAs.
TD 8861	Private Foundation Disclosure Rules.
TD 8933	Qualified Transportation Fringe Benefits.
TD 8978	Excise Taxes on Excess Benefit Transactions (REG-246256-96).
TD 8987	Required Distributions from Retirement Plans.
TD 9075	Compensation Deferred Under Eligible Deferred Compensation Plans.
TD 9076	Special Rules Under Section 417(a)(7) for Written Explanations Provided by Qualified Retirement Plans After Annuity Starting Dates.
TD 9079	Ten or More Employer Plan Compliance Information.
TD 9083	Golden Parachute Payments.
TD 9088	Compensatory Stock Options Under Section 482.
TD 9092	Split-Dollar Life Insurance Arrangements.
TD 9097	Arbitrage Restrictions Applicable to Tax-Exempt Bonds Issued by State and Local Governments.
TD 9099	Disclosure of Relative Values of Optional Forms of Benefit.
TD 9142	Deemed IRAs in Qualified Retirement Plans.
TD 9169	Retirement plans; Cash or deferred arrangements under section 401(k) and matching contributions or employee contributions under section 401(m) Regulations.
TD 9237	Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k).
TD 9324	Designated Roth Contributions Under Section 402A.
TD 9334	Requirement of Return and Time for Filing.
TD 9340	Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts.
TD 9447	Automatic Contribution Arrangements.
TD 9472	Notice Requirements for Certain Pension Plan Amendments Significantly Reducing the Rate of Future Benefit Accrual.
TD 9492	Excise Taxes on Prohibited Tax Shelter Transactions and Related Disclosure Requirements; Disclosure Requirements with Respect to Prohibited Tax Shelter Transactions; Requirement of Return and Time for Filing.
TD 9495	Qualified Zone Academy Bonds: Obligations of States and Political Subdivisions.
TD 9641	Reduction or Suspension of Safe Harbor Contributions.
TD 9708	Additional Requirements for Charitable Hospitals; Community Health Needs Assessments for Charitable Hospitals; Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return.
TD 9724	Summary of Benefits and Coverage, Uniform Glossary for ACA Group Health Plans.
TD 9741	General Allocation and Accounting Regulations Under Section 141; Remedial Actions for Tax-Exempt Bonds.
TD 9765	Suspension of Benefits under the Multiemployer Pension Reform Act of 2014.
TD 9777	Arbitrage Guidance for Tax-Exempt Bonds.
TD 9801	Issue Price Definition for Tax-Exempt Bonds.
TD 9845	Public Approval of Tax-Exempt Private Activity Bonds.
TD 9846	Regulations Regarding the Transition Tax Under Section 965 and Related Provisions.
TD 9855	Regulations To Prescribe Return and Time for Filing for Payment of Section 4960, 4966, 4967, and 4968 Taxes and To Update the Abatement Rules for Section 4966 and 4967 Taxes.
TD 9866	Guidance Related to Section 951A (Global Intangible Low-Taxed Income) and Certain Guidance Related to Foreign Tax Credits.
TD 9873	Regulations on the Requirement To Notify the IRS of Intent To Operate as a Section 501(c)(4) Organization.
TD 9898	Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations.
TD 9902	Guidance Under Sections 951A and 954 Regarding Income Subject to a High Rate of Foreign Tax.
TD 9917	Guidance on the Determination of the Section 4968 Excise Tax Applicable to Certain Colleges and Universities.

Guidance	Title/description
TD 9933	Unrelated Business Taxable Income Separately Computed for Each Trade or Business.
TD 9938	Tax on Excess Tax-Exempt Organization Executive Compensation.
TD 9972	Electronic-Filing Requirements for Specified Returns and Other Documents.
TD 9975	Pre-Filing Registration Requirements for Certain Tax Credit Elections.
TD 9979	Additional Guidance on Low-Income Communities Bonus Credit Program.
TD 9988	Elective Payment of Applicable Credits; Elective Payment of Advanced Manufacturing Investment Credit; Final Rules; Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships.
TD 9998	Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL, and Related Attachments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA). The IRS is soliciting comments on forms used by business entity taxpayers. (See Appendix-A of this notice for a list of forms, schedules, and related attachments).

DATES: Written comments should be received on or before November 12, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov. Include OMB Control No. 1545–0123 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to LaNita Van Dyke, at (202)–317–6009, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at lanita.vandyke@irs.gov.

SUPPLEMENTARY INFORMATION:

Tax Compliance Burden

Tax compliance burden is defined as the time and money taxpayers spend to comply with their tax filing responsibilities. Time-related activities include recordkeeping, tax planning, gathering tax materials, learning about the law and what you need to do, and completing and submitting the return. Out-of-pocket costs include expenses such as purchasing tax software, paying a third-party preparer, and printing and postage. Tax compliance burden does not include a taxpayer's tax liability, economic inefficiencies caused by sub-optimal choices related to tax deductions or credits, or psychological costs.

Proposed PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Number: 1545–0123.

Form Numbers: Forms 1065, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and all attachments to these forms (see the Appendices to this notice).

Abstract: These forms are used by businesses to report their income tax liability.

Current Actions: There have been changes in regulatory guidance related to various forms approved under this

approval package during the past year. There have been additions and removals of forms included in this approval package. It is anticipated that these changes will have an impact on the overall burden and cost estimates requested for this approval package, however these estimates were not finalized at the time of release of this notice. These estimated figures are expected to be available by the release of the 30-day comment notice from Treasury. This approval package is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Corporations, Partnerships and Pass-Through Entities.

Preliminary Estimated Number of Respondents: 13,500,000.

Preliminary Estimated Time Per Respondent (Hours): 70 hours, 4 minutes.

Preliminary Estimated Total Annual Time (Hours): 946,000,000.

Preliminary Estimated Total Annual Monetized Time (\$): 56,955,000,000.

Preliminary Estimated Total Out-of-Pocket Costs (\$): 68,491,000,000.

Preliminary Estimated Total Monetized Burden (\$): 125,446,000,000.

Note: Total Monetized Burden = Total Out-of-Pocket Costs + Total Annual Monetized Time.

Note: Amounts below are estimates for Fiscal Year (FY) 2025. Reported time and cost burdens are national averages and do not necessarily reflect a “typical case.” Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

ESTIMATES FOR FORM 1120, 1120S AND 1065 SERIES OF RETURNS AND FORMS AND SCHEDULES
FY2025

	FY 24	Program change due to adjustment	FY 25
Number of Respondents	13,300,000	200,000	13,500,000
Burden in Hours	920,000,000	26,000,000	946,000,000
Monetized Time Burden	\$54,743,000,000	\$2,212,000,000	\$56,955,000,000

ESTIMATES FOR FORM 1120, 1120S AND 1065 SERIES OF RETURNS AND FORMS AND SCHEDULES—Continued
FY2025

	FY 24	Program change due to adjustment	FY 25
Out-of-Pocket Costs	\$66,717,000,000	\$1,774,000,000	\$68,491,000,000
Total Monetized Burden	\$121,460,000,000	\$3,986,000,000	\$125,446,000,000

The following paragraph applies to all the collections of information contained within the OMB approval for 1545–0123.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the

quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 6, 2024.

Jon R. Callahan,
Senior Tax Analyst.

Appendix A

Product	Title
* Form 1042	Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
* Form 1042 (SCH Q)	Schedule Q (Form 1042).
* Form 1042–S	Foreign Person's U.S. Source Income Subject to Withholding.
* Form 1042–T	Annual Summary and Transmittal of Forms 1042–S.
Form 1065	U.S. Return of Partnership Income.
Form 1065 (SCH B–1)	Information for Partners Owning 50% or More of the Partnership.
Form 1065 (SCH B–2)	Election Out of the Centralized Partnership Audit Regime.
Form 1065 (SCH C)	Additional Information for Schedule M–3 Filers.
Form 1065 (SCH D)	Capital Gains and Losses.
Form 1065 (SCH K–1)	Partner's Share of Income, Deductions, Credits, etc.
Form 1065 (SCH K–2)	Partner's Distributive Share Items-International.
Form 1065 (SCH K–3)	Partner's Share of Income, Deductions, Credits, etc.-International.
Form 1065 (SCH M–3)	Net Income (Loss) Reconciliation for Certain Partnerships.
Form 1065X	Amended Return or Administrative Adjustment Request (AAR).
Form 1066	U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
Form 1066 (SCH Q)	Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.
Form 1118	Foreign Tax Credit-Corporations.
Form 1118 (SCH I)	Reduction of Foreign Oil and Gas Taxes.
Form 1118 (SCH J)	Adjustments to Separate Limitation Income (Loss) Categories for Determining Numerators of Limitation Fractions, Year-End Recharacterization Balances, and Overall Foreign and Domestic Loss Account Balances.
Form 1118 (SCH K)	Foreign Tax Carryover Reconciliation Schedule.
Form 1118 (SCH L)	Foreign Tax Redeterminations.
Form 1120	U.S. Corporation Income Tax Return.
Form 1120 (SCH B)	Additional Information for Schedule M–3 Filers.
Form 1120 (SCH D)	Capital Gains and Losses.
Form 1120 (SCH G)	Information on Certain Persons Owning the Corporation's Voting Stock.
Form 1120 (SCH H)	Section 280H Limitations for a Personal Service Corporation (PSC).
Form 1120 (SCH M–3)	Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More.
Form 1120 (SCH N)	Foreign Operations of U.S. Corporations.
Form 1120 (SCH O)	Consent Plan and Apportionment Schedule for a Controlled Group.
Form 1120 (SCH PH)	U.S. Personal Holding Company (PHC) Tax.
Form 1120 (SCH UTP)	Uncertain Tax Position Statement.
Form 1120–C	U.S. Income Tax Return for Cooperative Associations.
Form 1120–F	U.S. Income Tax Return of a Foreign Corporation.
Form 1120–F (SCH H)	Deductions Allocated to Effectively Connected Income Under Regulations Section 1.861–8.
Form 1120–F (SCH I)	Interest Expense Allocation Under Regulations Section 1.882–5.
Form 1120–F (SCH M1 & M2)	Reconciliation of Income (Loss) and Analysis of Unappropriated Retained Earnings per Books.
Form 1120–F (SCH M–3)	Net Income (Loss) Reconciliation for Foreign Corporations With Reportable Assets of \$10 Million or More.
Form 1120–F (SCH P)	List of Foreign Partner Interests in Partnerships.
Form 1120–F (SCH Q)	Tax Liability of Qualified Derivatives Dealer (QDD).
Form 1120–F (SCH S)	Exclusion of Income From the International Operation of Ships or Aircraft Under Section 883.
Form 1120–F (SCH V)	List of Vessels or Aircraft, Operators, and Owners.
Form 1120–FSC	U.S. Income Tax Return of a Foreign Sales Corporation.

Product	Title
Form 1120-FSC (SCH P)	Transfer Price or Commission.
Form 1120-H	U.S. Income Tax Return for Homeowners Associations.
Form 1120-IC-DISC	Interest Charge Domestic International Sales Corporation Return.
Form 1120-IC-DISC (SCH K)	Shareholder's Statement of IC-DISC Distributions.
Form 1120-IC-DISC (SCH P)	Intercompany Transfer Price or Commission.
Form 1120-IC-DISC (SCH Q)	Borrower's Certificate of Compliance With the Rules for Producer's Loans.
Form 1120-L	U.S. Life Insurance Company Income Tax Return.
Form 1120-L (SCH M-3)	Net Income (Loss) Reconciliation for U.S. Life Insurance Companies With Total Assets of \$10 Million or More.
* Form 1120-ND	Return for Nuclear Decommissioning Funds and Certain Related Persons.
Form 1120-PC	U.S. Property and Casualty Insurance Company Income Tax Return.
Form 1120-PC (SCH M-3)	Net Income (Loss) Reconciliation for U.S. Property and Casualty Insurance Companies With Total Assets of \$10 Million or More.
Form 1120-POL	U.S. Income Tax Return for Certain Political Organizations.
Form 1120-REIT	U.S. Income Tax Return for Real Estate Investment Trusts.
Form 1120-RIC	U.S. Income Tax Return for Regulated Investment Companies.
Form 1120-S	U.S. Income Tax Return for an S Corporation.
Form 1120-S (SCH B-1)	Information on Certain Shareholders of an S Corporation.
Form 1120-S (SCH D)	Capital Gains and Losses and Built-In Gains.
Form 1120-S (SCH K-1)	Shareholder's Share of Income, Deductions, Credits, etc.
Form 1120-S (SCH K-2)	Shareholder's Pro Rata Share Items-International.
Form 1120-S (SCH K-3)	Shareholder's Share of Income, deductions, Credits, etc.-International.
Form 1120-S (SCH M-3)	Net Income (Loss) Reconciliation for S Corporations With Total Assets of \$10 Million or More.
Form 1120-SF	U.S. Income Tax Return for Settlement Funds (Under Section 468B).
Form 1120-X	Amended U.S. Corporation Income Tax Return.
Form 1122	Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return.
Form 1125-A	Cost of Goods Sold.
Form 1125-E	Compensation of Officers.
Form 1127	Application for Extension of Time for Payment of Tax Due to Undue Hardship.
Form 1128	Application to Adopt, Change, or Retain a Tax Year.
Form 1138	Extension of Time For Payment of Taxes By a Corporation Expecting a Net Operating Loss Carryback.
Form 1139	Corporation Application for Tentative Refund.
Form 2220	Underpayment of Estimated Tax By Corporations.
Form 2438	Undistributed Capital Gains Tax Return.
Form 2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
Form 2553	Election by a Small Business Corporation.
* Form 2848	Power of Attorney and Declaration of Representative.
* Form 3115	Application for Change in Accounting Method.
* Form 3468	Investment Credit.
* Form 3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
* Form 3520-A	Annual Return of Foreign Trust With a U.S. Owner.
* Form 3800	General Business Credit.
* Form 4136	Credit for Federal Tax Paid on Fuels.
* Form 4255	Recapture of Investment Credit.
* Form 4466	Corporation Application for Quick Refund of Overpayment of Estimated Tax.
* Form 4562	Depreciation and Amortization (Including Information on Listed Property).
* Form 4684	Casualties and Thefts.
* Form 4797	Sales of Business Property.
* Form 4810	Request for Prompt Assessment Under Internal Revenue Code Section 6501(d).
* Form 4876-A	Election to Be Treated as an Interest Charge DISC.
Form 5452	Corporate Report of Nondividend Distributions.
Form 5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
Form 5471 (SCH E)	Income, War Profits, and Excess Profits Taxes Paid or Accrued.
Form 5471 (SCH G-I)	Schedule G-1 (Form 5471), Cost Sharing Arrangement.
Form 5471 (SCH H)	Current Earnings and Profits.
Form 5471 (SCH I-1)	Information for Global Intangible Low-Taxed Income.
Form 5471 (SCH J)	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
Form 5471 (SCH M)	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
Form 5471 (SCH O)	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of its Stock.
Form 5471 (SCH P)	Previously Taxed Earnings and Profits of U.S. Shareholder of Certain Foreign Corporations.
Form 5471 (SCH Q)	CFC Income by CFC Income Groups.
Form 5471 (SCH R)	Distributions From a Foreign Corporation.
Form 5472	Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.
* Form 56	Notice Concerning Fiduciary Relationship.
* Form 56-F	Notice Concerning Fiduciary Relationship of Financial Institution.
* Form 5713	International Boycott Report.
* Form 5713 (SCH A)	International Boycott Factor (Section 999(c)(1)).
* Form 5713 (SCH B)	Specifically, Attributable Taxes and Income (Section 999(c)(2)).

Product	Title
* Form 5713 (SCH C)	Tax Effect of the International Boycott Provisions.
* Form 5735	American Samoa Economic Development Credit.
* Form 5735 Schedule P	Allocation of Income and Expenses Under Section 936(h)(5).
* Form 5884	Work Opportunity Credit.
* Form 5884-A	Credits for Affected Midwestern Disaster Area Employers (for Employers Affected by Hurricane Harvey, Irma, or Maria or Certain California Wildfires).
* Form 6198	At-Risk Limitations.
* Form 6478	Biofuel Producer Credit.
* Form 6627	Environmental Taxes.
* Form 6765	Credit for Increasing Research Activities.
* Form 6781	Gains and Losses From Section 1256 Contracts and Straddles.
* Form 7004	Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.
* Form 7205	Energy Efficient Commercial Buildings Deduction.
* Form 7207	Advanced Manufacturing Production Credit.
* Form 7210	Clean Hydrogen Production Credit.
* Form 7211	Clean Electricity Production Credit.
Form 7213	Nuclear Power Production Credit.
* Form 7217	Partner's Report of Property Distributed by a Partnership.
* Form 7218	Clean Fuel Production Credit.
Form 8023	Elections Under Section 338 for Corporations Making Qualified Stock Purchases.
Form 8050	Direct Deposit Corporate Tax Refund.
* Form 8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
* Form 8275	Disclosure Statement.
* Form 8275-R	Regulation Disclosure Statement.
* Form 8288	U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests.
* Form 8288-A	Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests.
* Form 8288-B	Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests.
Form 8288-C	Statement of Withholding Under Section 1446(f)(4) on Dispositions by Foreign Persons of Partnership Interests.
* Form 8300	Report of Cash Payments Over \$10,000 Received In a Trade or Business.
* Form 8302	Electronic Deposit of Tax Refund of \$1 Million or More.
Form 8308	Report of a Sale or Exchange of Certain Partnership Interests.
* Form 8329	Lender's Information Return for Mortgage Credit Certificates (MCCs).
Form 8404	Interest Charge on DISC-Related Deferred Tax Liability.
Form 8453-CORP	E-file Declaration for Corporations.
Form 8453-PE	U.S. Partnership Declaration for an IRS e-file Return.
Form 851	Affiliations Schedule.
* Form 8586	Low-Income Housing Credit.
* Form 8594	Asset Acquisition Statement Under Section 1060.
* Form 8609	Low-Income Housing Credit Allocation and Certification.
* Form 8609-A	Annual Statement for Low-Income Housing Credit.
* Form 8611	Recapture of Low-Income Housing Credit.
* Form 8621	Information Return By Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
* Form 8621-A	Return by a Shareholder Making Certain Late Elections to End Treatment as a Passive Foreign Investment Company.
* Form 8655	Reporting Agent Authorization.
* Form 8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
* Form 8703	Annual Certification of a Residential Rental Project.
Form 8716	Election To Have a Tax Year Other Than a Required Tax Year.
Form 8752	Required Payment or Refund Under Section 7519.
Form 8804	Annual Return for Partnership Withholding Tax (Section 1446).
Form 8804 (SCH A)	Penalty for Underpayment of Estimated Section 1446 Tax for Partnerships.
Form 8804-C	Certificate of Partner-Level Items to Reduce Section 1446 Withholding.
Form 8804-W	Installment Payments of Section 1446 Tax for Partnerships.
Form 8805	Foreign Partner's Information Statement of Section 1446 Withholding tax.
Form 8806	Information Return for Acquisition of Control or Substantial Change in Capital Structure.
Form 8810	Corporate Passive Activity Loss and Credit Limitations.
* Form 8813	Partnership Withholding Tax Payment Voucher (Section 1446).
Form 8819	Dollar Election Under Section 985.
* Form 8820	Orphan Drug Credit.
* Form 8822-B	Change of Address—Business.
* Form 8824	Like-Kind Exchanges.
Form 8825	Rental Real Estate Income and Expenses of a Partnership or an S Corporation.
* Form 8826	Disabled Access Credit.
Form 8827	Credit for Prior Year Minimum Tax-Corporations.
* Form 8830	Enhanced Oil Recovery Credit.
* Form 8832	Entity Classification Election.
* Form 8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
* Form 8834	Qualified Electric Vehicle Credit.
* Form 8835	Renewable Electricity, Refined Coal, and Indian Coal Production Credit.

Product	Title
* Form 8838	Consent to Extend the Time To Assess Tax Under Section 367-Gain Recognition Agreement.
* Form 8838-P	Consent To Extend the Time To Assess Tax Pursuant to the Gain Deferral Method (Section 721(c)).
Form 8842	Election to Use Different Annualization Periods for Corporate Estimated Tax.
* Form 8844	Empowerment Zone Employment Credit.
Form 8845	Indian Employment Credit.
Form 8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
Form 8848	Consent to Extend the Time to Assess the Branch Profits Tax Under Regulations Sections 1.884-2(a) and (c).
* Form 8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities (FDEs) and Foreign Branches (FBs).
* Form 8858 (SCH M)	Transactions Between Foreign Disregarded Entity (FDE) or Foreign Branch (FB) and the Filer or Other Related Entities.
* Form 8864	Biodiesel and Renewable Diesel Fuels Credit.
Form 8865	Return of U.S. Persons With Respect to Certain Foreign Partnerships.
Form 8865 (SCH G)	Statement of Application for the Gain Deferral Method Under Section 721€.
Form 8865 (SCH H)	Acceleration Events and Exceptions Reporting Relating to Gain Deferral Method Under Section 721€.
Form 8865 (SCH K-1)	Partner's Share of Income, Deductions, Credits, etc.
Form 8865 (SCH K-2)	Partner's Distributive Share Items-International.
Form 8865 (SCH K-3)	Partner's Share of Income, Deductions, Credits, etc.-International.
Form 8865 (SCH O)	Transfer of Property to a Foreign Partnership.
Form 8865 (SCH P)	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
* Form 8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
Form 8869	Qualified Subchapter S Subsidiary Election.
* Form 8873	Extraterritorial Income Exclusion.
* Form 8874	New Markets Credit.
Form 8875	Taxable REIT Subsidiary Election.
* Form 8878-A	IRS e-file Electronic Funds Withdrawal Authorization for Form 7004.
Form 8879-CORP	E-file Authorization for Corporations.
Form 8879-PE	IRS e-file Signature Authorization for Form 1065.
* Form 8881	Credit for Small Employer Pension Plan Startup Costs.
* Form 8882	Credit for Employer-Provided Childcare Facilities and Services.
* Form 8883	Asset Allocation Statement Under Section 338.
* Form 8886	Reportable Transaction Disclosure Statement.
* Form 8896	Low Sulfur Diesel Fuel Production Credit.
* Form 8900	Qualified Railroad Track Maintenance Credit.
* Form 8902	Alternative Tax on Qualified Shipping Activities.
* Form 8903	Domestic Production Activities Deduction.
* Form 8906	Distilled Spirits Credit.
* Form 8908	Energy Efficient Home Credit.
* Form 8910	Alternative Motor Vehicle Credit.
* Form 8911	Alternative Fuel Vehicle Refueling Property Credit.
* Form 8911 Schedule A	Alternative Fuel Vehicle Refueling Property.
* Form 8912	Credit to Holders of Tax Credit Bonds.
Form 8916	Reconciliation of Schedule M-3 Taxable Income with Tax Return Taxable Income for Mixed Groups.
Form 8916-A	Supplemental Attachment to Schedule M-3.
* Form 8918	Material Advisor Disclosure Statement.
Form 8923	Mining Rescue Team Training Credit.
* Form 8925	Report of Employer-Owned Life Insurance Contracts.
* Form 8926	Disqualified Corporate Interest Expense disallowed under section 163(j) and Related Information.
* Form 8927	Determination Under Section 860€(4) by a Qualified Investment Entity.
* Form 8932	Credit for Employer Differential Wage Payments.
* Form 8933	Carbon Oxide Sequestration Credit.
* Form 8933 Sch A	Disposal or Enhanced Oil Recovery Owner Certification.
* Form 8933 Sch B	Disposal Operator Certification.
* Form 8933 Sch C	Enhanced Oil Recovery Operator Certification.
* Form 8933 Sch D	Recapture Certification.
* Form 8933 Sch E	Election Certification.
* Form 8933 Sch F	Utilization Certification.
* Form 8936	Clean Vehicle Credit.
* Form 8936 Sch A	Clean Vehicle Credit Amount.
Form 8936-A	Qualified Commercial Clean Vehicle Credit.
Form 8936-A Sch 1	Schedule for Qualified Commercial Clean Vehicle.
* Form 8937	Report of Organizational Actions Affecting Basis of Securities.
* Form 8938	Statement of Foreign Financial Assets.
* Form 8941	Credit for Small Employer Health Insurance Premiums.
* Form 8947	Report of Branded Prescription Drug Information.
* Form 8966	FATCA Report.
* Form 8966-C	Cover Sheet for Form 8966 Paper Submissions.
* Form 8975	Country-by-Country Report.

Product	Title
* Form 8975 Sch A	Tax Jurisdiction and Constituent Entity Information.
Form 8978	Partner's Additional Reporting Year Tax.
Form 8978-Sch-A	Partners Additional Reporting Year Tax.
Form 8979	Partnership Representative Revocation/Resignation and Designation.
Form 8990	Limitation on Business Interest Expense IRC 163(j).
Form 8991	Tax on Base Erosion Payments of Taxpayers with Substantial Gross Receipts.
Form 8992	U.S. Shareholder Calculation of Global Intangible Low-Taxed Income (GILTI).
Form 8992 Sch-A	Schedule A, Global Intangible Low-Taxed Income (GILTI).
Form 8992-Sch-B	Calculation of Global Intangible Low-Taxed Income (GILTI) for Members of a U.S. Consolidated Group Who Are U.S. Shareholders of a CFC.
Form 8993	Section 250 Deduction for Foreign-Derived Intangible Income (FDII) and Global Intangible Low-Taxed Income (GILTI).
* Form 8994	Employer Credit for Paid Family and Medical Leave.
* Form 8995	Qualified Business Income Deduction Simplified Computation.
* Form 8995-A	Qualified Business Income Deduction.
* Form 8995-A (SCH A)	Specified Service Trades or Businesses.
* Form 8995-A (SCH B)	Aggregation of Business Operations.
* Form 8995-A (SCH C)	Loss Netting And Carryforward.
* Form 8995-A (SCH D)	Special Rules for Patrons Of Agricultural Or Horticultural Cooperatives.
Form 8996	Qualified Opportunity Fund.
Form 8997	Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments.
Form 926	Return by a U.S. Transferor of Property to a Foreign Corporation.
Form 965-B	Corporate and Real Estate Investment Trust (REIT) Report of Net 965 Tax Liability and Electing REIT Report of 965 Amounts.
Form 965-C	Transfer Agreement Under Section 965(h)(3).
Form 965-D	Transfer Agreement Under 965(i)(2).
Form 965-E	Consent Agreement Under 965(i)(4)(D).
Form 966	Corporate Dissolution or Liquidation.
* Form 970	Application to Use LIFO Inventory Method.
* Form 972	Consent of Shareholder to Include Specific Amount in Gross Income.
Form 973	Corporation Claim for Deduction for Consent Dividends.
Form 976	Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.
* Form 982	Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).
* Form SS-4	Application for Employer Identification Number.
* Form SS-4(PR)	Solicitud de Número de Identificación Patronal (EIN).
* Form T (TIMBER)	Forest Activities Schedule.
* Form W-8BEN	Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding (Individuals).
* Form W-8BEN(E)	Certificate of Entities Status of Beneficial Owner for United States Tax Withholding (Entities).
* Form W-8ECI	Certificate of Foreign Person's Claim That Income is Effectively Connected With the Conduct of a Trade or Business in the United States.
* Form W-8IMY	Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding and Reporting

Forms marked with an asterisk (*) are also filed by other taxpayers (e.g., individuals, tax-exempt organizations).

Appendix B

Previous OMB No.	Title
1545-0731	Definition of an S Corporation.
1545-0746	LR-100-78 (Final) Creditability of Foreign Taxes.
1545-0755	Related Group Election With Respect to Qualified Investments in Foreign Base Company Shipping Operations.
1545-0771	TD 8864 (Final); EE-63-88 (Final and temp regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; IA-140-86 (Temporary) Fringe Benefits Treas reg 1.274.
1545-0807	(TD 7533) Final, DISC Rules on Procedure and Administration; Rules on Export Trade Corporations, and (TD 7896) Final, Income from Trade Shows.
1545-0879	TD 8426—Certain Returned Magazines, Paperbacks or Records (IA-195-78).
1545-1018	FI-27-89 (Temporary and Final) Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; FI-61-91 (Final) Allocation of Allocable Investment.
1545-1041	TD 8316 Cooperative Housing Corporations.
1545-1051	TD 8556 (Final)—Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).
1545-1068	T.D. 8618—Definition of a Controlled Foreign Corporation, Foreign Base Company Income, and Foreign Personal Holding Company Income of a Controlled Foreign Corporation (INTL-362-88).
1545-1070	Effectively connected income and the branch profits tax.

Previous OMB No.	Title
1545-1072	INTL-952-86 (Final-TD 8410) and TD 8228 Allocation and Apportionment of Interest Expense and Certain Other Expenses.
1545-1083	Treatment of Dual Consolidated Losses.
1545-1093	Final Minimum Tax-Tax Benefit Rule (TD 8416).
1545-1102	PS-19-92 (TD 9420—Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.
1545-1130	Special Loss Discount Account and Special Estimated Tax Payments for Insurance Companies.
1545-1146	Applicable Conventions Under the Accelerated Cost.
1545-1191	Information with Respect to Certain Foreign-Owned Corporations—IRC Section 6038A.
1545-1218	CO-25-96 (TD 8824—Final) Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following.
1545-1224	T. D. 8337 (Final) Allocation and Apportionment of Deduction for State Income Taxes (INTL-112-88).
1545-1233	Adjusted Current Earnings (IA-14-91) (Final).
1545-1237	REG-209831-96 (TD 8823) Consolidated Returns—Limitation on the Use of Certain Losses and Deductions.
1545-1251	TD 8437—Limitations on Percentage Depletion in the Case of Oil and Gas Wells.
1545-1254	TD 8396—Conclusive Presumption of Worthlessness of Debts Held by Banks (FI-34-91).
1545-1260	CO-62-89 (Final) Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.
1545-1271	Treatment of transfers of stock or securities to foreign corporations.
1545-1275	Limitations on net operating loss carryforwards and certain built-in losses following ownership change.
1545-1287	FI-3-91 (TD 8456—Final) Capitalization of Certain Policy Acquisition Expenses.
1545-1290	TD 8513—Bad Debt Reserves of Banks.
1545-1299	TD 8459—Settlement Funds.
1545-1300	Treatment of Acquisition of Certain Financial Institutions: Certain Tax Consequences of Federal Financial Assistance to Financial Institutions.
1545-1308	TD 8449 (Final) Election, Revocation, Termination, and Tax Effect of Subchapter S Status.
1545-1324	CO-88-90 (TD 8530) Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change; Special Rule for Value of a Loss Corporation Under the Jurisdiction.
1545-1338	Election Out of Subchapter K for Producers of Natural Gas—TD 8578.
1545-1344	TD 8560 (CO-30-92) Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless (Final).
1545-1352	TD 8586 (Final) Treatment of Gain From Disposition of Certain Natural Resource Recapture Property.
1545-1357	PS-78-91 (TD 8521)(TD 8859) Procedures for Monitoring Compliance with Low-Income Housing Credit Requirements; PS-50-92 Rules to Carry Out the Purposes of Section 42 and for Correcting.
1545-1364	Methods To Determine Taxable Income in connection with a Cost Sharing Arrangement—IRC Section 482.
1545-1412	FI-54-93 (Final) Clear Reflection of Income in the Case of Hedging Transactions.
1545-1433	Consolidated and Controlled Groups—Intercompany Transactions and Related Rules.
1545-1434	CO-26-96 (Final) Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.
1545-1438	TD 8643 (Final) Distributions of Stock and Stock Rights.
1545-1440	TD 8611, Conduit Arrangements Regulations—Final (INTL-64-93).
1545-1447	CO-46-94 (TD 8594—Final) Losses on Small Business Stock.
1545-1462	PS-268-82 (TD 8696) Definitions Under Subchapter S of the Internal Revenue Code.
1545-1476	Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.
1545-1480	TD 8985—Hedging Transactions.
1545-1484	TD 8881(Final) REG-242282-97 (formerly Intl-62-90, Intl-32-93, Intl-52-86, and Intl-52-94) General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign.
1545-1491	TD 8746—Amortizable Bond Premium.
1545-1493	TD 8684—Treatment of Gain From the Disposition of Interest in Certain Natural Resource Recapture Property by S Corporations and Their Shareholders.
1545-1507	(TD 8701)—Treatment of Shareholders of Certain Passive Investment Companies; (TD 8178)—Passive Foreign Investment Companies.
1545-1522	Revenue Procedure 2017-52, 2017-1, 2017-3 Rulings and determination letters.
1545-1530	Rev. Proc. 2007-32—Tip Rate Determination Agreement (Gaming Industry); Gaming Industry Tip Compliance Agreement Program.
1545-1539	REG-208172-91 (TD 8787—final) Basis Reduction Due to Discharge of Indebtedness.
1545-1541	Revenue Procedure 97-27, Changes in Methods of Accounting.
1545-1546	Revenue Procedure 97-33, EFTPS (Electronic Federal Tax Payment System).
1545-1548	Rev. Proc. 2013-30, Uniform Late S Corporation Election Revenue Procedure.
1545-1549	Tip Reporting Alternative Commitment (TRAC) Agreement and Tip Rate Determination (TRDA) for Use in the Food and Beverage Industry.
1545-1551	Changes in Methods of Accounting (RP 2016-29).

Previous OMB No.	Title
1545-1555	REG-115795-97 (Final) General Rules for Making and Maintaining Qualified Electing Fund Elections.
1545-1556	TD 8786—Source of Income From Sales of Inventory Partly From Sources Within a Possession of the U.S.; Also, Source of Income Derived From Certain Purchases From a Corp. Electing Sec. 936.
1545-1558	Rev. Proc. 98-46 (modifies Rev. Proc. 97-43)—Procedures for Electing Out of Exemptions Under Section 1.475(c)-1; and Rev. Rul. 97-39, Mark-to-Market Accounting Method for Dealers in Securities.
1545-1559	Revenue Procedures 98-46 and 97-44, LIFO Conformity Requirement.
1545-1566	Notice 2010-46, Prevention of Over-Withholding of U.S. Tax Avoidance With Respect to Certain Substitute Dividend Payments.
1545-1588	Adjustments Following Sales of Partnership Interests.
1545-1590	REG-251698-96 (T.D. 8869—Final) Subchapter S Subsidiaries.
1545-1617	REG-124069-02 (Final) Section 6038—Returns Required with Respect to Controlled Foreign Partnerships; REG-118966-97 (Final) Information Reporting with Respect to Certain Foreign Partnership.
1545-1634	TD 9595 (REG-141399-07) Consolidated Overall Foreign Losses, Separate Limitation Losses, and Overall Domestic Losses.
1545-1641	Rev. Proc. 99-17—Mark to Market Election for Commodities Dealers and Securities and Commodities Traders.
1545-1642	TD 8853 (Final), Reclassifying Financing Arrangements Involving Fast-Pay Stock.
1545-1646	TD 8851—Return Requirement for United States Persons Acquiring or Disposing of an Interest in a Foreign Partnership, or Whose Proportional Interest in a Foreign Partnership Changes.
1545-1647	Revenue Procedure 2001-21 Debt Roll-Ups.
1545-1657	Revenue Procedure 99-32—Conforming Adjustments Subsequent to Section 482 Allocations.
1545-1658	Purchase Price Allocations in Deemed Actual Asset Acquisitions.
1545-1661	Qualified lessee construction allowances for short-term leases.
1545-1672	T.D. 9047—Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).
1545-1675	Treatment of taxable income of a residual interest holder in excess of daily accruals.
1545-1677	Exclusions From Gross Income of Foreign Corporations.
1545-1684	Pre-Filing Agreements Program.
1545-1690	Notice 2000-28, Coal Exports.
1545-1699	TD 9715; Rev. Proc. 2015-26 (Formerly TD 9002; Rev Proc 2002-43), Agent for Consolidated Group.
1545-1701	Revenue Procedure 2000-37—Reverse Like-kind Exchanges (as modified by Rev Proc. 2004-51).
1545-1706	TD 9315—Section 1503(d) Closing Agreement Requests.
1545-1711	TD 9273—Stock Transfer Rules: Carryover of Earnings and Taxes (REG-116050-99).
1545-1714	Tip Reporting Alternative Commitment (TRAC) for most industries.
1545-1716	Employer-Designed Tip Reporting Program for the Food and Beverage Industry (EmTRAC)—Notice 2001-1.
1545-1717	Tip Rate Determination Agreement (TRDA) for Most Industries.
1545-1718	Source of Income from Certain Space and Ocean Activities; Source of Communications Income (TD 9305—final).
1545-1730	Manner of making election to terminate tax-exempt bond financing.
1545-1731	Extraterritorial Income Exclusion Elections.
1545-1736	Advanced Insurance Commissions—Revenue Procedure 2001-24.
1545-1748	Changes in Accounting Periods—REG-106917-99 (TD 8669/Final).
1545-1752	Revenue Procedure 2008-38, Revenue Procedure 2008-39, Revenue Procedure 2008-40, Revenue Procedure 2008-41, Revenue Procedure 2008-42.
1545-1756	Revenue Procedure 2001-56, Demonstration Automobile Use.
1545-1765	T.D. 9171, New Markets Tax Credit.
1545-1768	Revenue Procedure 2003-84, Optional Election to Make Monthly Sec. 706 Allocations.
1545-1774	Extensions of Time to Elect Method for Determining Allowable Loss.
1545-1784	Rev Proc 2002-32 as Modified by Rev Proc 2006-21, Waiver of 60-month Bar on Reconsolidation after Disaffiliation.
1545-1786	Changes in Periods of Accounting.
1545-1799	Notice 2002-69, Interest Rates and Appropriate Foreign Loss Payment Patterns For Determining the Qualified Insurance Income of Certain Controlled Corporations under Section 954(f).
1545-1801	Revenue Procedure 2002-67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.
1545-1820	Revenue Procedure 2003-33, Section 9100 Relief for 338 Elections.
1545-1828	TD 9048; 9254—Guidance under Section 1502; Suspension of Losses on Certain Stock Disposition (REG-131478-02).
1545-1831	TD 9157 (Final) Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments w/one or more Payments that are Denominated in, or Determined by Reference to, a Nonfunctional Currency.
1545-1833	Revenue Procedure 2003-37, Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.
1545-1834	Revenue Procedure 2003-39, Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

Previous OMB No.	Title
1545-1837	Revenue Procedure 2003-36, Industry Issue Resolution Program.
1545-1847	Revenue Procedure 2004-29—Statistical Sampling in Sec. 274 Context.
1545-1855	TD 9285—Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5).
1545-1861	Revenue Procedure 2004-19—Probable or Prospective Reserves Safe Harbor.
1545-1870	TD 9107—Guidance Regarding Deduction and Capitalization of Expenditures.
1545-1893	Rollover of Gain from Qualified Small Business Stock to Another Qualified Small Business Stock.
1545-1900	(TD 9212) Final, Source of Compensation for Labor or Personal Services.
1545-1903	TD 9168—Optional 10-Year Write-off of Certain Tax Preferences (REG-124405-03).
1545-1905	TD 9289 (Final) Treatment of Disregarded Entities Under Section 752.
1545-1906	TD 9210—LIFO Recapture Under Section 1363(d).
1545-1915	Notice 2005-4, Fuel Tax Guidance, as modified.
1545-1939	Notification Requirement for Transfer of Partnership Interest in Electing Investment Partnership (EIP).
1545-1945	26 U.S. Code § 475—Mark to market accounting method for dealers in securities.
1545-1946	T.D. 9315 (Final) Dual Consolidated Loss Regulations.
1545-1965	TD 9360 (REG-133446-03)(Final) Guidance on Passive Foreign Company (PFC) Purging Elections.
1545-1983	Qualified Railroad Track Maintenance Credit.
1545-1986	Notice 2006-47, Elections Created or Effected by the American Jobs Creation Act of 2004.
1545-1990	Application of Section 338 to Insurance Companies.
1545-2001	Rev. Proc. 2006-16, Renewal Community Depreciation Provisions.
1545-2002	Notice 2006-25 (superseded by Notice 2007-53), Qualifying Gasification Project Program.
1545-2003	Notice 2006-24, Qualifying Advanced Coal Project Program.
1545-2004	Deduction for Energy Efficient Commercial Buildings.
1545-2008	Nonconventional Source Fuel Credit.
1545-2014	TD 9452—Application of Separate Limitations to Dividends from Noncontrolled Section 902 Corporations.
1545-2017	Notice 2006-46 Announcement of Rules to be included in Final Regulations under Section 897(d) and (e) of the Internal Revenue Code.
1545-2019	TD 9451—Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules (TD 9329).
1545-2028	Fuel Cell Motor Vehicle Credit.
1545-2030	REG-120509-06 (TD 9465—Final), Determination of Interest Expense Deduction of Foreign Corporations.
1545-2036	Taxation and Reporting of REIT Excess Inclusion Income by REITs, RICs, and Other Pass-Through Entities (Notice 2006-97).
1545-2070	Rev. Proc. 2007-48 Rotable Spare Parts Safe Harbor Method.
1545-2072	Revenue Procedure 2007-35—Statistical Sampling for Purposes of Section 199.
1545-2091	TD 9512 (Final)—Nuclear Decommissioning Funds.
1545-2096	Loss on Subsidiary Stock—REG-157711-02 (TD 9424—Final).
1545-2103	Election to Expense Certain Refineries.
1545-2110	REG-127770-07 (Final), Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit.
1545-2114	S Corporation Guidance under AJCA of 2004 (TD 9422 Final—REG-143326-05).
1545-2125	REG-143544-04 Regulations Enabling Elections for Certain Transaction Under Section 336(e).
1545-2133	Rev. Proc. 2009-16, Section 168(k)(4) Election Procedures and Rev. Proc. 2009-33, Section 168(k)(4) Extension Property Elections.
1545-2134	Notice 2009-41—Credit for Residential Energy Efficient Property.
1545-2145	Notice 2009-52, Election of Investment Tax Credit in Lieu of Production Tax Credit; Coordination with Department of Treasury Grants for Specified Energy Property in Lieu of Tax Credits.
1545-2147	Internal Revenue Code Section 108(i) Election.
1545-2149	Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense (TD 9456).
1545-2150	Notice 2009-58, Manufacturers' Certification of Specified Plug-in Electric Vehicles.
1545-2151	Qualifying Advanced Energy Project Credit—Notice 2013-12.
1545-2153	Notice 2009-83—Credit for Carbon Dioxide Sequestration Under Section 45Q.
1545-2155	TD 9469 (REG-102822-08) Section 108 Reduction of Tax Attributes for S Corporations.
1545-2156	Revenue Procedure 2010-13, Disclosure of Activities Grouped under Section 469.
1545-2158	Notice 2010-54: Production Tax Credit for Refined Coal.
1545-2171	TD 9490—Extended Carryback of Losses to or from a Consolidated Group.
1545-2183	Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f). (TD 9614 & 9615).
1545-2186	TD 9504, Basis Reporting by Securities Brokers and Basis Determination for Stock; TD 9616, TD9713, and TD 9750.
1545-2194	Rules for Certain Rental Real Estate Activities.
1545-2209	REG-112805-10—Branded Prescription Drugs.
1545-2242	REG-135491-10—Updating of Employer Identification Numbers.
1545-2245	REG-160873-04—American Jobs Creation Act Modifications to Section 6708, Failure to Maintain List of Advisees With Respect to Reportable Transactions.
1545-2247	TD 9633—Limitations on Duplication of Net Built-in Losses.

Previous OMB No.	Title
1545-2259	Performance & Quality for Small Wind Energy Property.
1545-2276	Safe Harbor for Inadvertent Normalization Violations.
* 1545-2291	TD 9866 (REG-951A) and Notice 2020-69 (S Corporation Guidance under Section 958 (Rules for Determining Stock Ownership) and Guidance Regarding the Treatment of Qualified Improvement Property under the Alternative Depreciation System for Purposes of the QBAI Rules for FDII and GILTI (NOT-114860-20).
1545-0123	Notice 2024-60—Required Procedures to Claim a Section 45Q Credit for Utilization of Carbon Oxide.
1545-0123	TD 9993—Transfer of Certain Credits.
1545-0123	TD 9998—Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements.
1545-0123	TD 10004—Guidance Under Section 367(b) Related to Certain Triangular Reorganizations and Inbound Nonrecognition Transactions.

* Merged into 1545-0123 since the last OMB approval.

[FR Doc. 2024-20568 Filed 9-10-24; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Collection Activities; Requesting Comments on Form 8995 and Form 8995-A and Schedules A, B, C, and D

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8995, Qualified Business Income Deduction Simplified Computation, Form 8995-A, Qualified Business Income Deduction, Form 8895-A Schedule A, Specified Service Trades or Businesses, Form 8895-A Schedule B, Aggregation of Business Operations, Form 8895-A Schedule C, Loss Netting and Carryforward, and Form 8895-A Schedule D, Special Rules for Patrons of Agricultural or Horticultural Cooperatives.

DATES: Written comments should be received on or before November 12, 2024 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to pra.comments@irs.gov.

Include OMB Control No. 1545-2294 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of this collection should be directed to Jason Schoonmaker, (801) 620-2128, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at jason.m.schoonmaker@irs.gov.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Qualified Business Income Deduction.

OMB Number: 1545-2294.

Form Number: Form 8995, Form 8995-A, Schedules A, B, C, and D.
Abstract: Form 8995 and Form 8995-A is used to figure and report qualified business income (QBI) deduction. These burden estimates are only for trust and estate filers. The burden estimates for other filers are covered under OMB control numbers 1545-0047 for tax-exempt filers, 1545-0074 for individual filers, and 1545-0123 for business filers.

Current Actions: There are no changes to the burden previously approved by OMB. However, the estimated number of responses was updated to eliminate duplication of the burden associated with individual filers captured under OMB control number 1545-0074. This submission is for renewal purposes.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households, Business or other for-profit organizations.

Estimated Number of Responses: 696,900.

Estimated Time per Respondent: 8 hours, 2 minutes.

Estimated Total Annual Burden Hours: 5,596,107.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 6, 2024.

Jason M. Schoonmaker,
Tax Analyst.

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Part II

Securities and Exchange Commission

17 CFR Parts 270 and 274

Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund
Liquidity Risk Management Programs; Final Rule

**SECURITIES AND EXCHANGE
COMMISSION****17 CFR Parts 270 and 274**

[Release No. IC-35308; File No. S7-26-22]

RIN 3235-AM98

**Form N-PORT and Form N-CEN
Reporting; Guidance on Open-End
Fund Liquidity Risk Management
Programs****AGENCY:** Securities and Exchange
Commission.**ACTION:** Final rule; guidance.**SUMMARY:** The Securities and Exchange
Commission (“Commission”) is
adopting amendments to reporting
requirements on Forms N-PORT and N-
CEN that apply to certain registeredinvestment companies, including
registered open-end funds, registered
closed-end funds, and unit investment
trusts. The amendments will require
more frequent reporting of monthly
portfolio holdings and related
information to the Commission and the
public, amend certain reporting
requirements relating to entity
identifiers, and require open-end funds
to report information about service
providers used to comply with liquidity
risk management program requirements.
In addition, the Commission is
providing guidance related to open-end
fund liquidity risk management program
requirements.**DATES:***Effective dates:* The amendments to
Forms N-PORT and N-CEN, and
amendatory instruction 2 to 17 CFR270.30b1-9, are effective November 17,
2025. Amendatory instruction 3 to 17
CFR 270.30b1-9 is effective May 18,
2026.*Compliance dates:* The applicable
compliance dates are discussed in
section II.E.**FOR FURTHER INFORMATION CONTACT:**Susan Ali, Counsel; Alexis Hassell,
Senior Counsel; Frank Buda or Angela
Mokodean, Senior Special Counsels; or
Brian M. Johnson, Assistant Director at
(202) 551-6792, Investment Company
Regulation Office, Division of
Investment Management, Securities and
Exchange Commission, 100 F Street NE,
Washington, DC 20549-8549.**SUPPLEMENTARY INFORMATION:** The
Commission is adopting amendments to
the following rules and forms:

Commission reference	CFR citation (17 CFR)
Investment Company Act of 1940 (“Act” or “Investment Company Act”) ¹	
Rule 30b1-9	§ 270.30b1-9.
Form N-PORT	§ 274.150.
Form N-CEN	§ 274.101.

¹ 15 U.S.C. 80a-1 *et seq.* Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to title 17, part 270 of the Code of Federal Regulations [17 CFR part 270].**Table of Contents**

I. Introduction	3
II. Discussion	13
A. Amendments to Form N-PORT	13
1. Filing Frequency	13
2. Publication Frequency	32
3. Other Amendments to Form N-PORT	42
B. Amendments to Form N-CEN	47
C. Guidance on Open-End Fund Liquidity Risk Management Program Requirements	48
D. Technical and Conforming Amendments	57
E. Transition Periods	57
III. Other Matters	62
IV. Economic Analysis	63
A. Introduction	63
B. Baseline	65
1. Regulatory Baseline	65
2. Affected Entities	69
C. Benefits and Costs of the Amendments	72
1. Form N-PORT Filing Frequency	72
2. Form N-PORT Publication Frequency	80
3. Amendments to Form N-CEN	89
4. Entity Identifiers	90
5. Other Compliance Costs	90
D. Effects on Efficiency, Competition, and Capital Formation	92
1. Efficiency	92
2. Competition	93
3. Capital Formation	95
E. Alternatives	96
1. Form N-PORT Filing Frequency	96
2. Form N-PORT Publication Frequency	97
3. Other Alternatives	98
V. Paperwork Reduction Act	99
A. Introduction	99
B. Form N-PORT	100
C. Form N-CEN	106
VI. Final Regulatory Flexibility Analysis	109
A. Need for and Objectives of the Rule and Form Amendments	110
B. Significant Issues Raised by Public Comments	110
C. Small Entities Subject to Rule Amendments	112

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements	112
E. Agency Action To Minimize Effect on Small Entities	114
Statutory Authority	116

I. Introduction

As the primary regulator of the asset management industry, the Commission utilizes information filed in reports of registered investment companies to, among other things, monitor industry trends, identify risks, inform policy and rulemaking, and assist Commission staff in examination and enforcement efforts. For a large segment of registered investment companies (“funds”), reports on Form N-PORT are an important source of information for the Commission and its staff.² These reports provide monthly information about a fund’s complete portfolio holdings, as well as related information to help assess a fund’s risks, including investment risk (e.g., interest rate risk, credit risk, and volatility risk), liquidity risk, counterparty risk, and leverage.

Separate from the Commission’s use of Form N-PORT information, investors also benefit from information about a fund’s portfolio holdings to make more informed investment decisions. For instance, portfolio holding information can help investors assess the extent to which their funds have portfolios that overlap, as well as how funds comply with their investment objectives or deviate from those objectives. Investors may benefit from third-party analysis of the information, such as analysis by data aggregators, broker-dealers, investment advisers, and others that provide investment information to fund investors and assist investors in selecting fund investments. Some investors, and particularly institutional investors, may use portfolio holding information directly. We have observed that many funds voluntarily disclose their monthly portfolio holdings on their websites or through third party data aggregators, making additional portfolio information available to assist investors with their investment decisions. However, practices vary, and some funds disclose only quarterly information about portfolio holdings. Furthermore, the portfolio holdings

information funds voluntarily disclose is not provided in a standardized format that facilitates efficient analysis and is sometimes available only for a fee, and may not include information that Form N-PORT reports include, such as information to help assess a fund’s risks like interest rate risk, credit risk, and counterparty risk.

After considering comments as discussed below, the Commission is adopting amendments to Form N-PORT to provide the Commission and the public with timelier information about funds’ portfolio investments and, in turn, improve transparency and facilitate better monitoring of these funds. The final amendments will require funds to file Form N-PORT reports for a given month within 30 days of the end of that month. This change will increase the timeliness of the information we receive, which will promote more effective regulatory monitoring and oversight of the fund industry for the benefit of fund investors while balancing the need for timelier information against competing concerns regarding the data’s sensitivity and the time funds need to collect and file accurate information. The final amendments will also make monthly Form N-PORT reports available to the public with a 60-day delay to enhance public transparency and its associated benefits for investors. For instance, more frequent public disclosure of funds’ portfolios will increase transparency of funds’ portfolios and portfolio trends to investors, reducing information asymmetries between funds and investors.

Currently, registered management investment companies and ETFs organized as unit investment trusts are required to file periodic reports on Form N-PORT about their portfolios as of month end.³ While the reports provide monthly information to the Commission, funds file these reports on a quarterly basis and have up to 60 days after the end of the quarter to file with the Commission. Moreover, the public has access to information for only the third month of each quarter, and information for the first and second months of each quarter remains confidential.⁴

³ See rule 30b1–9 and Form N-PORT. Money market funds and small business investment companies are excluded from Form N-PORT reporting requirements.

⁴ Certain of the reported information, such as information about liquidity and use of derivatives,

As adopted in 2016, Form N-PORT would have required funds to file monthly reports within 30 days of month end.⁵ Only reports for every third month were to be available to the public. In adopting Form N-PORT, the Commission highlighted the utility of monthly portfolio reporting for fund monitoring, particularly in times of market stress. The Commission also originally required funds to file each monthly report within 30 days of month end because more delayed data would reduce the utility of the information to the Commission and lag times of more than 30 days would make monthly reporting impractical, as reports would overlap with preparation time.⁶

However, as part of a subsequent Commission assessment of its internal cybersecurity risk profile, the Commission re-evaluated the filing frequency for Form N-PORT reports. The then-Chairman also directed the staff to take a number of steps designed to strengthen the Commission’s cybersecurity risk profile, with an initial focus on the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system as well as the nonpublic information the Commission collected and held. In December 2017, while these efforts were ongoing, the Commission determined to postpone the initial reporting of Form N-PORT on EDGAR by nine months.⁷ Subsequently, the Commission adopted an interim final rule to require quarterly filing of monthly information within 60 days of quarter-end.⁸

The Commission also required funds to maintain in their records the information that they are required to report on Form N-PORT no later than 30 days after the end of each month. In making these changes to the filing cadence and recordkeeping requirements, the Commission stated

remains confidential for all months of a quarter. See General Instruction F of Form N-PORT.

⁵ See Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (“Reporting Modernization Adopting Release”).

⁶ See *id.*, at section II.A.3.

⁷ See Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)].

⁸ See Amendments to the Timing Requirements for Filing Reports on Form N-PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] (“2019 Form N-PORT Timing Amendments”) for more detailed background regarding the 2019 Form N-PORT Timing Amendments. See also rule 30b1–9.

² In this release, we generally use the term “fund” to refer to registrants that currently are required to report on Form N-PORT, including registered open-end funds, registered closed-end funds, and exchange-traded funds (“ETFs”) organized as unit investment trusts, and excluding money market funds and small business investment companies. In the context of discussing Form N-CEN, the term “fund” generally refers to registrants that currently are required to report on Form N-CEN, which in addition to the registrants that are required to report on Form N-PORT include money market funds, small business investment companies, and registered unit investment trusts.

that the filing delay would meaningfully reduce the potential cybersecurity risks arising from the collection and maintenance of sensitive nonpublic data on EDGAR. However, the Commission stated that the staff would continue to monitor and solicit feedback on the data received and the use made (or expected to be made) of such data in furtherance of the Commission's statutory mission, as well as cybersecurity considerations and other matters deemed relevant by staff.⁹

Since that time, the Commission has taken steps to address the impetus for the interim final rule, including by modernizing the EDGAR system that funds use to file Form N-PORT reports. For instance, the Commission has engaged in a multi-year, multi-phase effort to modernize the EDGAR system, including both internal and public-facing components.¹⁰ Further, the Commission has gained additional experience in receiving, maintaining, and protecting sensitive portfolio data on the EDGAR system, including, for example, protecting the existing nonpublic portions of Form N-PORT and confidential treatment requests for reports on Form 13F.

Market events since adoption of the interim final rule have also reinforced the need for more timely data regarding funds' portfolios, and thereby, the need to reduce the delay in Form N-PORT reporting. In this regard, the delay of Form N-PORT data under the quarterly reporting requirements has limited the Commission's ability to develop a timely and more complete understanding of the market, thereby impeding its ability to respond to market stresses and events as they are developing.

• *Delayed Understanding of COVID-19 Impact on Markets.* Market disruptions related to the COVID-19 pandemic began in March 2020. Funds' reports on Form N-PORT that would reflect these events were not due until June 1, 2020, at the earliest, and some funds' reports were due as late as the end of July 2020.¹¹ Further, the information available to Commission staff from Form N-PORT reports at the

onset of the market disruptions reflected fund portfolios and activities as of several months earlier—ranging from the end of October 2019 to the end of December 2019.¹² Thus, in many cases, the available information was unlikely to reflect reasonably current portfolios and activities of funds because of the reporting delays. This meant that the monthly filings were not an effective tool to help Commission staff, for example, assess and analyze how the events related to the COVID-19 pandemic were affecting funds or to identify issues for further inquiry. Moreover, Commission staff could not begin to review Form N-PORT information from March 2020 to assess and analyze the effects of the market disruptions more directly until the beginning of June, and the staff did not have full information for all funds until the end of July.

• *Delayed Understanding of Impact on Funds and their Investments from Russia's Invasion of Ukraine.* The Russian invasion of Ukraine began on February 24, 2022. The staff's analysis of this event was impeded by the lack of timelier portfolio information to assess funds' exposures that could be affected by the invasion (e.g., investments in Russian or Ukrainian companies). At that time, the Form N-PORT information available to Commission staff reflected funds' portfolio holdings between the end of September 2021 and the end of November 2021, depending on a fund's fiscal year end. While the staff obtained somewhat timelier December 2021 data for certain funds by March 1, 2022, that data was still several months out of date

and was available for only a little over half of funds. By the time the February 2022 data was available to the Commission staff to assess funds' exposures to investments that could be affected by Russia's invasion of Ukraine, the data was several months out of date.

• *Delayed Understanding of Funds' Exposures to the London Interbank Offered Rate ("LIBOR") and Readiness for Related Transition.* During the transition away from LIBOR, the lag in the Commission's receipt of Form N-PORT reports hindered the ability to monitor funds' LIBOR exposures and readiness for the transition. Consistent with the above examples, in analyzing funds' readiness for the transition, the portfolio information available to the staff from Form N-PORT reports was approximately two to four months out of date, depending on the fund's fiscal year end, which limited the ability to assess overall exposures and readiness across the fund industry at any given point in time.¹³

• *Delayed Understanding of Market Stress Relating to Particular Issuers or Asset Classes.* The current delays in Form N-PORT information have impeded the staff's ability to develop an accurate understanding of funds' exposures to particular issuers or asset classes that are under stress due to market events or other circumstances (e.g., a market participant experiencing a cyber-attack). For example, the delays limited the staff's ability to assess fund exposures to regional banks in Spring 2023 when certain regional banks became insolvent and concerns about broader contagion led to sizable declines in bank stock prices.¹⁴

More frequent and more timely Form N-PORT data will allow the Commission to (1) conduct more targeted and timely monitoring efforts; (2) analyze risks and trends more accurately; and (3) better assess the breadth and magnitude of potential impacts of market events and stress affecting particular issuers, asset classes, counterparties, or market participants. The Commission's ability to perform these functions more effectively and efficiently with more frequent and timely data will benefit investors and the markets, including for example during times of market stresses and

¹² Specifically, Commission staff had information as of Dec. 31, 2019, for funds with fiscal years ending in Mar., June, Sept., or Dec. (around 51% of the total number of funds and representing approximately 56% of aggregate fund assets); information as of Nov. 30, 2019, for funds with fiscal years ending in Feb., May, Aug., or Nov. (around 20% of the total number of funds and representing approximately 20% of aggregate fund assets); and information as of Oct. 31, 2019, for funds with fiscal years ending in Jan., Apr., July, or Oct. (around 29% of the total number of funds and representing approximately 25% of aggregate fund assets). The latest date for which Commission staff had full information for all funds for a given month was Oct. 31, 2019. By Mar. 31, 2020, the Commission received information as of Jan. 31, 2020, for funds with fiscal years ending in Jan., Apr., July, or Oct. The percentage of funds with fiscal years ending in certain months and the percentage of aggregate fund assets are based on fiscal year end data as of Dec. 31, 2023. As a result, these percentages are approximations of the amount of data available in 2020, which at that time also did not include information for funds that are small entities because small entities were not required to comply with Form N-PORT reporting requirements until Mar. 1, 2020. See *infra* section IV.B.2 (providing additional information about the breakdown in funds' fiscal year end dates as of Dec. 31, 2023).

⁹ See 2019 Form N-PORT Timing Amendments, *supra* note 8, at nn.36 to 39 and accompanying text.

¹⁰ See Annual Report on SEC website Modernization Pursuant to Section 3(d) of the 21st Century Integrated Digital Experience Act (Dec. 2022), available at <https://www.sec.gov/files/21st-century-idea-act-report-2022-12.pdf>.

¹¹ Because reports are due 60 days after the end of a fund's fiscal quarter, deadlines vary based on the fund's fiscal year. See Open-End Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, Investment Company Act Release No. 34746 (Nov. 2, 2022) [87 FR 77172 (Dec. 16, 2022)] ("Proposing Release"), at n.273.

¹³ When staff is reviewing Form N-PORT reports at any given time, the data for some filers is generally two months out of date and more outdated for the remaining filers. See *supra* note 12 (discussing the percentage of funds that have quarter ends to their fiscal years on the same or different schedules).

¹⁴ See Financial Stability Oversight Council 2023 Annual Report, available at <https://home.treasury.gov/system/files/261/FSOC2023AnnualReport.pdf>.

events. Having more frequent and timely data in these circumstances would, for example, enhance the ability of Commission staff systematically to determine if impacts on funds are isolated or widespread, and to help determine if funds—and particularly a large number of funds—may require emergency action, such as emergency relief from the Commission to permit affected funds to suspend redemptions or market-wide actions coordinated with other Federal agencies. While funds are required to produce monthly data from their records upon Commission staff's request, this has not been an effective or efficient tool. Given that there is insufficient market data to determine which funds to prioritize, it is challenging for Commission staff to determine the appropriate funds from which to request data. It also could be inefficient to analyze on a timely basis data sets based on individual data requests even if Commission staff were able to identify potentially affected funds. As a result, when market events have occurred, Commission staff has encountered limits on its ability to identify the funds most directly affected by the events and to explore potential Commission responses, including the potential benefits or necessity of a response.¹⁵

In 2022, the Commission proposed to amend Form N-PORT to provide the Commission with timelier portfolio-related information and to provide investors with access to monthly rather than quarterly information.¹⁶ Specifically, the proposal would require all registered investment companies that report on that form to file monthly reports with the Commission within 30 days of month end. These monthly reports would subsequently be available to the public 60 days after month end.

Commenters expressed differing views on the proposed amendments, as discussed in more detail throughout this release.¹⁷ Some commenters were supportive of requiring funds to file more frequently and providing for greater public transparency.¹⁸ For

instance, one commenter suggested the proposed amendments would enhance the Commission's ability to respond to market events due to increased timeliness of data.¹⁹ Some commenters opposed the proposed amendments. For example, some commenters suggested that it would be burdensome for funds to file reports within 30 days.²⁰ In addition, some commenters expressed concern about more frequent public disclosure resulting in front-running or copycatting of fund strategies.²¹

We are adopting, substantially as proposed, amendments requiring that all registered investment companies that report on Form N-PORT file monthly reports with the Commission within 30 days of month end. Monthly report information will then be publicly available 60 days after month end. These changes are intended to give investors information to make more informed investment decisions and to give the Commission timelier information to conduct comprehensive oversight of an ever-evolving fund industry. We are also adopting conforming amendments and amendments related to certain entity identifiers as proposed. In a change from the proposal, we are not adopting the proposed amendments to require funds to present portfolio holdings in accordance with Regulation S-X more frequently than currently required. We also are not adopting proposed reporting amendments relating to funds' use of swing pricing or to liquidity classifications in this release, as we are not adopting amendments to the underlying rules at this time.

In addition to the Form N-PORT amendments, we are adopting proposed amendments to Form N-CEN to modify certain items related to entity identifiers and require open-end funds that are subject to liquidity risk management program requirements under 17 CFR 270.22e-4 (rule 22e-4) to report certain

Comment Letter"); Comment Letter of Daniel Hof zum Ahaus (Nov. 10, 2022) ("Hof zum Ahaus Comment Letter"); Comment Letter of Taylor Myers (Feb. 15, 2023) ("Myers Comment Letter").

¹⁹ See Better Markets Comment Letter.

²⁰ See, e.g., Comment Letter of T. Rowe Price (Feb. 14, 2023) ("T. Rowe Comment Letter"); Comment Letter of The Charles Schwab Corporation (Feb. 14, 2023) ("Schwab Comment Letter"); Comment Letter of Investment Company Institute (Feb. 14, 2023) ("ICI Comment Letter I"); Comment Letter of BlackRock, Inc. (Feb. 14, 2023) ("BlackRock Comment Letter"); Comment Letter of PIMCO (Feb. 13, 2023) ("PIMCO Comment Letter").

²¹ See, e.g., Comment Letter of Dodge & Cox (Mar. 1, 2023) ("Dodge & Cox Comment Letter I"); ICI Comment Letter I; Comment Letter of PGIM Investments LLC (Feb. 14, 2023) ("PGIM Comment Letter"); Comment Letter of Principal Financial Group (Feb. 14, 2023) ("Principal Comment Letter"); PIMCO Comment Letter.

information about service providers used to fulfill that rule's requirements. Further, we are adopting, as proposed, technical amendments to Form N-PORT and Form N-CEN to update the definition of "exchange-traded fund" in those forms to refer directly to the Commission's exemptive rule for exchange-traded funds. Finally, we are providing guidance related to open-end fund liquidity risk management program requirements.

II. Discussion

A. Amendments to Form N-PORT

1. Filing Frequency

We are adopting, as proposed, amendments to rule 30b1-9 and Form N-PORT to require funds to file reports on Form N-PORT on a more timely basis, with changes to both the frequency with which a fund will file reports on Form N-PORT and when the reports are due.²² Specifically, rather than filing monthly reports with the Commission on a quarterly basis, funds will be required to file reports on a monthly basis.²³ These monthly filings will be due within 30 days after the end of the month to which they relate, rather than no later than 60 days after the end of the fiscal quarter.²⁴

Several commenters supported, or did not oppose, filing monthly reports with greater frequency than currently required.²⁵ Some commenters expressed that filing information on Form N-PORT with greater frequency would provide more timely information to the Commission, which would enhance the

²² The amendments also make a conforming edit to the filing instructions for Form N-PORT. See amended 17 CFR 274.150(a).

²³ We are also adopting conforming changes to General Instruction A of Form N-PORT and to rule 30b1-9 to remove references to the requirement for a fund to maintain in its records the information that is required to be included on Form N-PORT no later than 30 days after the end of each month. This requirement will no longer be necessary because the information will be filed with the Commission. See General Instruction A of amended Form N-PORT; amended rule 30b1-9.

²⁴ *Id.* As is the case currently, if the due date falls on a weekend or holiday, the filing deadline will be the next business day. See General Instruction A of amended Form N-PORT.

²⁵ See, e.g., Better Markets Comment Letter (supporting monthly reporting and with the proposed 30-day deadline after month end); Dane Comment Letter (same); Comment Letter of Invesco Ltd. (Feb. 13, 2023) ("Invesco Comment Letter") (supporting monthly reporting but suggesting a 45-day deadline after month end); Comment Letter of J.P. Morgan Asset Management (Feb. 14, 2023) ("JP Morgan Comment Letter") ("not oppos[ing]" monthly reporting but suggesting a 60-day filing deadline.). See also BlackRock Comment Letter; Hof zum Ahaus Comment Letter; Myers Comment Letter; ICI Comment Letter I; PIMCO Comment Letter.

¹⁵ We recognize there are tradeoffs in how frequently we require funds to file information on Form N-PORT. While receiving Form N-PORT information within a very short period of time after the end of a given month would further enhance the staff's ability to conduct these types of analyses relative to the final amendments, it also would increase reporting costs, errors, and data sensitivity. See *infra* section IIA.1.

¹⁶ See Proposing Release, *supra* note 11.

¹⁷ The comment letters on the Proposing Release (File No. S7-26-22) are available at <https://www.sec.gov/comments/s7-26-22/s72622.htm>.

¹⁸ See, e.g., Comment Letter of Better Markets (Feb. 14, 2023) ("Better Markets Comment Letter"); Comment Letter of Dane (Nov. 10, 2022) ("Dane

Commission's ability to oversee funds.²⁶ For example, one of these commenters observed that more current information "would have been beneficial to regulators and policymakers in crafting regulatory and legislative responses to the economic effects of the COVID-19 pandemic."²⁷ Another stated that "the combination of the quarterly reporting requirement and the 60-day filing delay results in the Commission receiving fund data that is stale, impeding the Commission's ability to use Form N-PORT information," and that "[m]onthly Form N-PORT filings would enhance the Commission's ability to effectively oversee funds and monitor their activities."²⁸

Some commenters opposed the proposed changes to the filing frequency of Form N-PORT.²⁹ These commenters stated that a monthly filing cadence would significantly increase burdens on funds and fund service providers, as well as costs to shareholders.³⁰ Some of these commenters suggested that monthly filing would increase the risk of errors in reported information.³¹ In addition, some commenters expressed concern that more frequent reporting would increase the risk that reported information could be misappropriated.³²

Commenters had varying views on the timeline for filing monthly reports. Some commenters supported the proposed 30-day filing deadline.³³ For example, one commenter stated that Form N-PORT information may be up to five months old by the time it reaches the Commission under the current timeline and that, by comparison, more regular reporting would provide regulators with timely information about funds.³⁴ Some commenters suggested a shorter filing deadline, such as one week, to reduce the staleness of

the data.³⁵ Several commenters—including some commenters that opposed more frequent filing and some that did not—said that, if the Commission requires more frequent filing, then it should provide more time to file, for example, 45 or 60 days after month end.³⁶ In particular, several commenters expressed that reporting 30 days after month end would not provide funds with enough time to compile, review, correct, and file the data required by Form N-PORT.³⁷ Some commenters stated that collecting Form N-PORT data can take time in cases where a fund has to engage in manual and time-consuming processes to obtain such information.³⁸ Some commenters suggested that, although funds currently are required to maintain the information necessary to prepare their reports on Form N-PORT within 30 days after month end, filing this information will involve additional steps that funds do not undertake for recordkeeping, such as data validation and data tagging.³⁹ Some commenters expressed that the risk of reporting errors would go up if a fund is required to complete additional filing steps on the same 30-day deadline that is required for recordkeeping.⁴⁰

A number of commenters also expressed that requiring monthly reporting within 30 days of month end would overburden funds (including fund internal systems and processes)

³⁵ See Hof zum Ahaus Comment Letter (suggesting weekly filing deadline with instant publishing); Myers Comment Letter (suggesting a 15-day reporting period if not weekly).

³⁶ See, e.g., T. Rowe Comment Letter (suggesting 60 days); Schwab Comment Letter (suggesting 45 days); BlackRock Comment Letter (suggesting 45 days); ICI Comment Letter I (suggesting 45 days); PIMCO Comment Letter (suggesting 45 days generally and 60 days for any periods for which a Form N-CSR will be filed); Comment Letter of Carol Singer (Dec. 13, 2022) ("Singer Comment Letter") (suggesting 60 days, at least for small reporting entities); Dodge & Cox Comment Letter I (suggesting 60 days).

³⁷ See, e.g., BlackRock Comment Letter; ICI Comment Letter I; PIMCO Comment Letter; T. Rowe Comment Letter.

³⁸ See ICI Comment Letter I (suggesting that these concerns are especially acute for funds investing in certain fixed income securities and derivatives to report certain adjustments on the form); see also T. Rowe Comment Letter (stating that a portion of monthly Form N-PORT data is gathered from internal systems that, in certain cases, must be manually updated).

³⁹ See, e.g., ICI Comment Letter I; Invesco Comment Letter.

⁴⁰ See, e.g., ICI Comment Letter I; T. Rowe Comment Letter (stating that a 30-day deadline would provide insufficient time for resolving data issues prior to filing, even with increased resources). See also BlackRock Comment Letter (expressing that 30 days is not enough for data quality reviews, "which are important for funds (who want to avoid errors) and for the SEC (for which data integrity is important)").

and service providers.⁴¹ Some commenters discussed overlap in teams that prepare, review, and file Form N-PORT with those that are involved with other required filings and suggested that a 30-day filing timeline for Form N-PORT would cause strains on these teams.⁴² Two commenters suggested that these strains would be pronounced for the months following the end of the reporting period that annual and semiannual reports are due.⁴³ Some commenters expressed concern that costs associated with filing within a shorter timeframe—such as costs of increased service provider fees, hiring more personnel, upgrading systems, and/or resubmitting filings—would be borne by fund shareholders.⁴⁴

Some commenters suggested that funds need more than 30 days to file Form N-PORT reports due to changes to the reporting requirements of Form N-PORT since the form was adopted and in consideration of additional changes to the reporting requirements that the Commission had proposed. For example, some commenters stated that reporting requirements associated with derivatives and liquidity risk management that were adopted after Form N-PORT was adopted have introduced additional complexity to the form.⁴⁵ In addition, some commenters stated that amendments to Form N-PORT that had been proposed in certain other rulemakings, but not adopted at the time of their comment letters, would increase the form's complexity, if adopted.⁴⁶ Some commenters also stated that other proposed amendments to Form N-PORT in the Proposing Release, such as those requiring Regulation S-X compliant presentations of portfolio schedules for additional months, would introduce complexity and necessitate more time to produce.⁴⁷

⁴¹ See, e.g., Comment Letter of Fidelity Investments (Feb. 14, 2023) ("Fidelity Comment Letter"); ICI Comment Letter I; Singer Comment Letter; T. Rowe Comment Letter; Invesco Comment Letter.

⁴² See, e.g., Singer Comment Letter; T. Rowe Comment Letter. See also ICI Comment Letter I.

⁴³ See PIMCO Comment Letter (suggesting extending the Form N-PORT timeline to 45 days after month end generally and 60 days for any periods for which a Form N-CSR will be filed); Singer Comment Letter.

⁴⁴ See, e.g., ICI Comment Letter I; Principal Comment Letter.

⁴⁵ See, e.g., BlackRock Comment Letter; PIMCO Comment Letter.

⁴⁶ See, e.g., BlackRock Comment Letter; PIMCO Comment Letter; ICI Comment Letter I; Invesco Comment Letter.

⁴⁷ See, e.g., T. Rowe Comment Letter; Singer Comment Letter; ICI Comment Letter I. These commenters also raised similar concerns with respect to proposed reporting requirements that we are not adopting (including information about the application of swing pricing), as we are not

²⁶ See, e.g., Better Markets Comment Letter; Dane Comment Letter; Invesco Comment Letter.

²⁷ Better Markets Comment Letter.

²⁸ Invesco Comment Letter (supporting monthly reporting but suggesting a 45-day deadline after month end).

²⁹ See, e.g., Comment Letter of Brighthouse Financial, Inc. (Feb. 13, 2023) ("Brighthouse Comment Letter"); PGIM Comment Letter; Principal Comment Letter; T. Rowe Comment Letter.

³⁰ See, e.g., Brighthouse Comment Letter (stating that monthly reporting will increase costs associated with the preparation, review, and filing of Form N-PORT reports; expanded vendor engagements; increased human resources; and developing new systems, processes, and procedures); PGIM Comment Letter; Principal Comment Letter; T. Rowe Comment Letter.

³¹ See, e.g., PGIM Comment Letter; Principal Comment Letter; T. Rowe Comment Letter.

³² See, e.g., Principal Comment Letter.

³³ See, e.g., Better Markets Comment Letter; Dane Comment Letter.

³⁴ See Better Markets Comment Letter.

Some commenters opposed the proposed requirement that funds file Form N–PORT reports on a monthly basis within 30 days of the end of the reporting period because of concerns about data security.⁴⁸ In particular, these commenters expressed concerns about the possibility of confidential and proprietary nonpublic information reported on Form N–PORT being misappropriated as a result of unauthorized access to such information.⁴⁹ Some commenters expressed concerns about the Commission’s ability to protect and maintain Form N–PORT data based on a 2022 SEC Office of Inspector General report, which indicated that the Commission must make certain enhancements to be deemed “effective” under the Federal Information Security Modernization Act reporting metrics for agency information security programs.⁵⁰ Most commenters expressing concern about data security stated that a somewhat longer filing deadline (*i.e.*, 45 or 60 days after month end) would reduce the risks associated with a data breach.⁵¹ Some commenters stated that a longer filing deadline would reduce risks associated with a breach because the Commission would retain a fund’s nonpublic portfolio-related information for less time, which would decrease the likelihood of misappropriation in the event of a breach.⁵²

A few commenters suggested that the proposed amendments would pose particular burdens for certain types of funds. For instance, a few commenters expressed concern about additional burdens for registered closed-end funds.⁵³ One of these commenters requested that we revise the proposed reporting period for closed-end funds because certain closed-end funds may not calculate a net asset value (“NAV”) on a monthly basis or, due to the assets they hold, may calculate their NAV on a significant delay, and therefore the proposal may cause certain closed-end funds to change their valuation

processes because of the proposed requirement to report the fund’s NAV in each monthly report.⁵⁴ Another commenter indicated that the shorter filing timeline would especially burden funds with complex investment strategies, such as alternative funds.⁵⁵

After considering comments, we are adopting, as proposed, amendments to rule 30b1–9 and Form N–PORT requiring funds to file reports on Form N–PORT on a monthly basis within 30 days after the end of the month to which they relate. Monthly reporting rather than quarterly reporting will provide more frequent and timely information to the Commission. More frequent and timely reporting of portfolio holdings information to the Commission will enable us to further our mission to protect investors by assisting the Commission and its staff in carrying out its regulatory responsibilities related to the asset management industry. These responsibilities include examination, enforcement, and monitoring of funds; formulation of policy; and the staff’s review of fund registration statements and disclosures.⁵⁶

As an example, and as discussed above and in the Proposing Release, recent market stress events, such as the beginning of the COVID–19 pandemic and Russia’s invasion of Ukraine, have further reinforced the Commission’s need for timely data regarding funds’ portfolios and the liquidity of those portfolios. The current months-long delay between the end of the month to which the information relates and when the Commission receives Form N–PORT data has limited the Commission staff’s ability to develop a more complete understanding of the market on a timely basis, which is particularly important during major market events. During these events, staff assess and identify how the events are affecting funds and, as needed, develop appropriate regulatory responses. For example, and as discussed above, having more frequent and timely data during market stress events would enhance the ability of Commission staff systematically to determine if impacts on funds are isolated or widespread. This in turn could inform whether regulatory relief

or other emergency actions, like emergency relief to allow funds to suspend redemptions, may be necessary and on what scale (*e.g.*, whether relief should be given to all or a large portion of funds or, instead, staff should conduct targeted outreach to only a handful of potentially affected funds). Further, stale data also can impede our ability to contribute fully to interagency collaboration often necessary to fashion appropriate responses to market events. During a major market event, more timely data would better inform whether coordinated interagency government actions may be necessary, and if so, the scale and parameters of those actions.

Other available means for acquiring timely data have not been an effective substitute for moving from a quarterly filing requirement to a monthly filing requirement. While, as some commenters pointed out, funds currently are required to produce monthly data upon request by the Commission staff, any such production would be done on an individual basis.⁵⁷ Making individual requests requires Commission staff to determine the appropriate funds from which to collect data, which can be particularly challenging when Commission staff is responding to market events and may not have the market data necessary to determine quickly which funds to prioritize in responding to the event. Moreover, effectively assessing the impact of a market event generally requires comprehensive data across funds, for example to assess the extent funds or areas of the market may be affected and to evaluate those impacts in the context of the market as a whole. This analysis is facilitated by timely reports on Form N–PORT and often cannot be efficiently assembled in a timely manner from individual requests to funds even if the Commission were able to determine the funds or types of funds most likely to be affected. As a result, we are not retaining the quarterly filing cadence as some commenters suggested.

The requirement we are adopting for funds to file Form N–PORT reports within 30 days of month end is consistent with the Commission’s historical determination that access to Form N–PORT information no later than 30-days following month end is important to further our mission to protect investors. When the Commission adopted Form N–PORT, it considered some commenters’ requests for a monthly reporting deadline of 45 or 60

adopting amendments to the relevant underlying rules at this time. *See supra* paragraph following note 21.

⁴⁸ *See, e.g.*, Dodge & Cox Comment Letter I; ICI Comment Letter I; Invesco Comment Letter; Principal Comment Letter.

⁴⁹ *See, e.g.*, Dodge & Cox Comment Letter I; ICI Comment Letter I; Invesco Comment Letter.

⁵⁰ *See* ICI Comment Letter I; Invesco Comment Letter.

⁵¹ *See, e.g.*, Dodge & Cox Comment Letter I (suggesting 60 days); ICI Comment Letter I (suggesting 45 days); Invesco Comment Letter (suggesting 45 days).

⁵² *See, e.g.*, Dodge & Cox Comment Letter I; ICI Comment Letter I; Invesco Comment Letter.

⁵³ *See, e.g.*, Comment Letter of Neuberger Berman Group LLC (Feb. 14, 2023) (“Neuberger Berman Comment Letter”); PGIM Comment Letter.

⁵⁴ *See* Neuberger Berman Comment Letter.

⁵⁵ *See* Fidelity Comment Letter.

⁵⁶ *See* Reporting Modernization Adopting Release, *supra* note 5, at section IV.A. We note that receiving more timely data will allow the staff to include more timely data in the staff’s Registered Fund Statistics public report, which provides to the public aggregated summary statistics derived from Form N–PORT data. Having more timely data in these public reports will provide investors and other data users with aggregate data that is more reflective of then-current fund portfolio information.

⁵⁷ *See, e.g.*, ICI Comment Letter (citing rule 30b1–9).

days after month end. The Commission declined to provide additional time, stating that it would reduce the utility of portfolio information to the Commission and would make monthly reporting impractical, as reports would overlap with preparation time.⁵⁸ When the Commission adopted the interim final rule to move to a quarterly filing requirement, it required funds to maintain the Form N-PORT data in their records 30 days after the end of each month to ensure that the Commission can receive more timely information, when necessary.⁵⁹ The Commission stated that the ability to collect information in a timely fashion through examination authority, and evaluate such information for compliance with the Federal securities laws, is essential to its mission of protecting investors and securities markets.⁶⁰

Our experience with recent market events supports and highlights our original position that more immediate access to Form N-PORT information is important to our mission, and at the same time highlights weaknesses in an approach that relies on receiving more timely Form N-PORT information through staff requests for records of individual funds. As a general matter, any delays in receipt of information can affect the Commission's and the staff's ability to use Form N-PORT information to carry out the Commission's regulatory function for the asset management industry.⁶¹ We are providing funds with 30 days to file information after the end of a given month to balance our need for timely information with considerations about the time and costs for funds to gather and file information accurately, as well as the sensitivity of the filed information.

The requirement to file Form N-PORT reports within 30 days of month end builds on the existing regulatory framework, as funds are already required to adhere to the 30-day deadline for recordkeeping purposes.⁶² Thus, funds currently are required to gather and record the data within 30 days of month end, and fund records must be accurate. The costs involved with the final amendments, therefore,

are limited to those associated with a more compressed time period to both gather the data and undertake additional processes associated with filing the data, such as data validation and tagging. As discussed below, the costs a fund will incur will turn on a variety of factors, including the extent to which the fund uses manual or automated processes in connection with its Form N-PORT reports, the complexity of the fund's strategy, the extent to which the fund uses a service provider to help prepare or file the reports, and how the fund currently maintains its records of information for the reports.

Overall, we recognize that filing the recorded information within the 30-day deadline will likely increase burdens for funds (including fund internal systems and processes) and service providers relative to the current quarterly filing requirement or a monthly filing requirement with a longer filing delay (e.g., 45 or 60 days). For instance, even though currently the information must be accurately gathered and recorded within 30 days, with a 30-day filing deadline, we recognize that funds must engage in additional processes associated with filing this information, and for funds that retain a service provider to file reports on behalf of the fund or otherwise help prepare Form N-PORT reports, there will be less time for coordination between the fund and service provider. Funds and their service providers also may need to collect the required information more quickly than they currently do to provide additional time to prepare the information for filing or for coordination among funds and service providers prior to filing. To the extent that funds and their service providers need to collect the required information more quickly for these purposes, this will present more challenges for funds and service providers that currently use manual processes to obtain some information, as opposed to funds and service providers that are able to pull data in a completely automated manner from internal systems. Similarly, it likely will present more challenges for funds with more complex strategies and their service providers in comparison to those with less complex strategies. In addition, we understand that increased costs may be passed on to fund shareholders.

We understand that the need to file Form N-PORT reports on a monthly basis, rather than a quarterly basis, will increase the workload of personnel or service providers that focus specifically on filing-related processes. We also recognize that the fund's adviser may be working to meet other regulatory reporting obligations during the same

period it is working to prepare monthly Form N-PORT reports, as commenters suggested. This effect may be more pronounced at certain times of the year, such as around the time a fund's annual proxy voting report is due or, as some commenters suggested, annual and semiannual shareholder reports are due.⁶³ As a result, the fund's adviser may need to make changes to timely meet all reporting obligations, such as increasing the use of service providers for reporting purposes or improving efficiency in the reporting process by, for example, updating internal systems and/or reducing the use of manual processes.

Some funds may also incur increased costs to transition from quarterly filing to monthly filing as a result of the requirement to file Form N-PORT reports in an eXtensible Markup Language ("XML") based structured data language. For purposes of Form N-PORT, funds do not manually enter fund data through, for example, a pre-formatted web form, and must submit the information in an XML-based structured data language. While funds are not required to store their records in an XML structured data language, the Commission has stated that doing so would facilitate the filing of Form N-PORT reports.⁶⁴

In considering the burdens and costs associated with the final amendments, we believe that commenters have overstated the extent to which Form N-PORT reporting burdens have increased since the Commission initially adopted the requirement in 2016 to file reports on Form N-PORT within 30 days of month end. A few commenters mentioned reporting changes related to liquidity risk management.⁶⁵ The Commission adopted the bulk of the liquidity-related reporting requirements on the same day it adopted Form N-PORT in 2016.⁶⁶ Since the Commission adopted Form N-PORT, liquidity-related amendments to the form have not had significant effects on the form's

⁵⁸ See Reporting Modernization Adopting Release, *supra* note 5, at paragraph accompanying n.461.

⁵⁹ See 2019 Form N-PORT Timing Amendments, *supra* note 8, at paragraph following n.34.

⁶⁰ See *id.* at paragraph accompanying n.43.

⁶¹ These functions include examination, enforcement, and monitoring of funds; formulation of policy; and the staff's review of fund registration statements and disclosures.

⁶² *Id.*

⁶³ See *supra* note 43. We considered providing additional time to file Form N-PORT reports for any period for which annual or semiannual reports on Form N-CSR are due, as one commenter suggested. See PIMCO Comment Letter. However, because funds file Form N-CSR reports at different points in the year, such an approach generally would result in the Commission not having as timely access to all funds' portfolio information for any month of the year.

⁶⁴ See 2019 Form N-PORT Timing Amendments, *supra* note 8, at text following n.34.

⁶⁵ See, e.g., BlackRock Comment Letter; PIMCO Comment Letter.

⁶⁶ See Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] ("Liquidity Rule Adopting Release"), at n.120.

reporting burdens.⁶⁷ Some commenters suggested that derivatives-related changes to the reporting requirements have added complexity to the form. However, the derivatives-related reporting the Commission added in 2020 generally requires funds to report information they are already required to have for purposes of complying with 17 CFR 270.18f–4 (rule 18f–4).⁶⁸

Some commenters expressed concern about potential reporting burdens associated with other amendments to Form N–PORT that had been proposed but not yet adopted at the time of the comments. These commenters primarily discussed potential reporting burdens associated with a Commission proposal related to the names rule, 17 CFR 270.35d–1 (rule 35d–1).⁶⁹ The Commission has subsequently adopted amendments to Form N–PORT associated with the names rule, with modifications to the proposed requirements (e.g., requiring less frequent and a reduced amount of names-related information compared to

the proposal) that should reduce costs compared to that proposal.⁷⁰

Similarly, while some commenters expressed concerns that proposed Form N–PORT changes in the Proposing Release would make compliance with the 30-day deadline overly burdensome, we are not adopting many of the proposed changes to Form N–PORT cited by the commenters.⁷¹ In particular, in a change from the proposal, we are not requiring funds to file Regulation S–X compliant portfolio disclosure 10 times per year instead of two times per year.⁷² In addition, in another change from the proposal, funds will not be required to report swing pricing-related information on Form N–PORT because we are not adopting the proposed requirements related to swing pricing.⁷³

We also recognize that requiring funds to file monthly Form N–PORT reports within 30 days of month end may increase the risk of reporting errors relative to the current quarterly filing requirement or a monthly reporting requirement with a longer filing delay (e.g., 45 or 60 days), as funds will be required to both gather the data and prepare it for filing within 30 days whereas today they must gather and record accurate data for recordkeeping purposes on this timeline. To reduce the risk of errors in the filing process, and to mitigate costs more generally, we are providing an extended implementation period during which funds will be able to update their Form N–PORT reporting processes to prepare for the requirement to file monthly information within 30 days of month end. In particular, funds may seek to enhance the efficiency of fund filing processes and potentially reduce the risk of filing-related errors, such as ways to reduce any manual steps or ways to streamline interactions with any service providers. To the extent that funds are able to improve their processes in a cost-effective manner to gather data, such as by reducing manual processes, this will provide additional time to prepare the data for filing within the 30-day period and reduce the likelihood of reporting errors. To the extent a fund identifies an error in its report after the filing deadline, it can file an amendment to

correct the error, as currently permitted.⁷⁴

Overall, the Commission’s historical view has been that there is not a significant burden differential between maintaining required information in a fund’s records and filing that information on Form N–PORT.⁷⁵ We acknowledge that the amendments will likely introduce some burdens, as discussed above, but these burdens are unlikely to be significant given that funds are already required to maintain records of the information Form N–PORT requires within the same 30-day deadline in which the amendments will require funds to file Form N–PORT reports.

Further, we do not believe that extending the filing deadline to 45 or 60 days after month end, or retaining the current quarterly filing cadence, is warranted to address data security, including misappropriation, concerns. As the Commission has previously stated, it employs an array of actions to safeguard and protect the confidentiality and security of all information reported to EDGAR, which includes data reported on Form N–PORT.⁷⁶ In addition, the Commission has engaged in a multi-year, multi-phase effort to modernize the EDGAR system, including both internal and public-facing components.⁷⁷ The Commission also has gained additional experience in receiving and maintaining sensitive portfolio data on the EDGAR system. This experience includes, for example, the existing nonpublic portions of Form N–PORT, which are subject to controls and systems designed to protect their

⁶⁷ See Investment Company Liquidity Disclosure, Investment Company Act Release No. 33142 (June 28, 2018) [83 FR 31859 (July 10, 2018)] (removing from Form N–PORT the requirement to report aggregate liquidity classification information, adding a requirement to report holdings of cash and cash equivalents, and allowing funds to report multiple liquidity classification categories for a single position under specified circumstances). As the Commission discussed in its economic analysis, funds would no longer incur costs associated with reporting an aggregate liquidity profile, and the costs of reporting holdings of cash and cash equivalents was not expected to be significant because funds already needed to keep track of their cash and cash equivalents for valuation purposes. *Id.*, at paragraph accompanying n.146. The amendment to allow funds to report multiple liquidity classifications for a single investment is optional and, as the Commission previously recognized, a fund could choose not to use this option if it had negative consequences. *Id.*, at paragraph accompanying n.168.

⁶⁸ See Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 2, 2020) [85 FR 83162 (Dec. 21, 2020)], at section II.G.1 (requiring funds that are limited derivatives users under rule 18f–4 to report information about their derivatives exposures and requiring funds that are subject to the limit on fund leverage risk in the rule to provide VaR information). See Items B.9 and B.10 of Form N–PORT.

⁶⁹ See, e.g., BlackRock Comment Letter; PIMCO Comment Letter; ICI Comment Letter I; Invesco Comment Letter. One commenter also suggested that a Commission proposal that would require enhanced disclosure about environmental, social, and governance investment practices would increase the complexity of Form N–PORT. See PIMCO Comment Letter. However, that proposal did not include amendments to Form N–PORT, and the Commission has not adopted that proposal at this time. See Enhanced Disclosure by Certain Investment Advisers and Investment Companies About Environmental, Social, and Governance Investment Practices, Investment Company Act Release No. 34594 (May 25, 2022) [87 FR 36654 (June 17, 2022)].

⁷⁰ See Investment Company Names, Investment Company Act Release No. 35000 (Sept. 20, 2023) [88 FR 70436 (Oct. 11, 2023)] (“Names Rule Adopting Release”), at sentence accompanying n.391.

⁷¹ See, e.g., T. Rowe Comment Letter; Singer Comment Letter; ICI Comment Letter I.

⁷² See Proposing Release, *supra* note 11, at section II.E.1.d.

⁷³ See *id.*

⁷⁴ See General Instruction A of Form N–PORT.

⁷⁵ See 2019 Form N–PORT Timing Amendments, *supra* note 8, at n.67 and accompanying text (stating that increasing the Form N–PORT filing delay and requiring funds to maintain in their records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month likely would not meaningfully change the costs for submitting the form and keeping records, but adding that to the extent it is more efficient for fund groups to submit all three monthly filings in one batch at quarter-end, costs may be marginally reduced by the shift from a monthly to a quarterly filing requirement). See also Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)], at paragraph accompanying n.56 (stating that the cost savings for large fund groups associated with a delay in submitting Form N–PORT and a delay in preparing funds’ systems to accommodate the XML Form N–PORT format requirement would be minimal because during the delay the large fund groups were still required to compile the information that is required to be included in Form N–PORT).

⁷⁶ See Annual Report on SEC website Modernization Pursuant to Section 3(d) of the 21st Century Integrated Digital Experience Act (Dec. 2022), available at <https://www.sec.gov/files/21st-century-idea-act-report-2022-12.pdf>.

⁷⁷ *Id.*

confidentiality, as well as confidential treatment requests for reports on Form 13F.⁷⁸

We also recognize that the Commission, like all Federal agencies, faces persistent and increasingly sophisticated malicious cyber-attacks that threaten the agency's technology systems and infrastructure. If successful, a cyber-attack could expose registrants' and other market participants' data. In this regard, the Commission is continuously working to improve its efforts to identify, deter, protect against, detect, and respond to these threats and actors. In addition, the Commission reports on required information technology security metrics and cybersecurity incidents to the appropriate oversight entities, including the SEC Office of Inspector General, the Office of Management and Budget ("OMB"), and the Cybersecurity and Infrastructure Security Agency ("CISA").⁷⁹

Considering that the information funds are required to report has not significantly changed since 2016 when the Commission adopted a requirement to report monthly information within 30 days of month end and funds are currently required to accurately maintain in their records the same monthly information required by Form N-PORT within 30 days of each month end, the costs of filing monthly Form N-PORT information within 30 days of month end will be justified by the benefits of timelier information for the staff's oversight purposes, particularly in connection with market events.

The requirement to file Form N-PORT reports within 30 days of month end will apply to all funds required to report on the form, and we are not providing a different reporting timeline for certain types of funds, such as closed-end funds. Based on staff experience, it is our understanding that most closed-end funds strike their NAVs on at least a monthly basis.⁸⁰ We understand that

some closed-end funds may not calculate NAVs on a monthly basis due to the assets they hold, or they may calculate their NAVs with a significant delay. These funds can strike their NAVs for Form N-PORT reporting purposes by using the internal methodologies consistent with how they currently report internally and to current and prospective investors.⁸¹ These funds currently are required to maintain a NAV in their monthly records and report the monthly records on Form N-PORT within 60 days of quarter end. Thus, the amendments are not changing the information these funds must collect and instead are changing the deadline by which required information must be filed with the Commission.

We recognize that a few commenters recommended a shorter filing deadline than we are adopting, with one commenter stating that requiring funds to report on Form N-PORT 30 days after month end will not provide the Commission with data that is timely in light of the speed with which markets change. While receiving information within a shorter period of time would enhance the staff's ability to use Form N-PORT information, particularly during periods of market stress, we are adopting a 30-day filing requirement because information with that degree of delay is still useful to meet the Commission's and the staff's needs, and requiring reporting within a shorter window would involve more substantial costs and increase the risk of errors in the reported information. In contrast, the 30-day filing deadline we are adopting aligns with the current timeline for funds to maintain records of Form N-PORT information, which mitigates the costs and risks of errors, in comparison to a shorter deadline, because funds already gather and record the required information within 30 days. Requiring funds to file more quickly than 30 days also could present greater data security risks because the confidential portfolio data maintained on EDGAR would be more sensitive. As a result of these considerations, we are adopting a 30-day filing timeline to balance the benefits and costs of timelier availability of information.

We recognize that there are tradeoffs regarding the timeframe in which funds must file portfolio-related information on Form N-PORT. The more frequently and more quickly this information is

they report internally and to current and prospective investors under General Instruction G of Form N-PORT).

⁸¹ See General Instruction G of Form N-PORT; Reporting Modernization Adopting Release, *supra* note 5, at n.460 and accompanying text.

filed, the more likely it is to reflect reasonably current portfolio information, which enhances the Commission staff's ability to oversee and monitor funds' activities. More frequent and more timely data allows Commission staff to conduct more targeted and prompt monitoring, such as identifying funds that hold securities of issuers that may be under stress or affected by wider stress events. It also would allow Commission staff to analyze risks and trends more accurately, including allowing Commission staff to better understand risks and trends as they develop and change. Finally, more frequent and more timely data would allow Commission staff to better assess potential impacts of market events affecting particular issuers, asset classes, counterparties, or market participants, including to analyze the potential impact of a market event and inform whether emergency action by the Commission or coordinated interagency action may be appropriate as discussed above. In turn, effective regulatory oversight ultimately benefits investors.

At the same time, filing information more frequently and quickly increases the costs and the potential for errors in the filed information and, for funds that do not publicly disclose their portfolio holdings within 30 days of month end, increases the sensitivity of the filed information and the associated risks of misappropriation. Conversely, less frequent and longer filing periods reduce the utility of the information for staff oversight and monitoring activities and decrease the benefits of these activities for investors, while also reducing costs, errors, and data sensitivity. After considering these tradeoffs, we have determined that, on the whole, reporting monthly information within 30 days of month end—including alignment with current recordkeeping requirements—appropriately balances these competing concerns.

2. Publication Frequency

We are adopting, as proposed, amendments making funds' monthly reports on Form N-PORT public 60 days after the end of the month.⁸² Currently, only the report for the third month of every quarter is made public upon filing, due 60 days after the end of that month. This means the amount of data made available to investors on Form N-PORT in a given year will triple as a result of the amendments. Thus, these amendments will enhance the

⁸² See General Instruction F of amended Form N-PORT.

⁷⁸ See, e.g., Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F, Investment Company Act Release No. 34635 (June 23, 2022) [87 FR 38943 (June 30, 2022)], at section II.C.

⁷⁹ See 44 U.S.C. 3554(b)(7), 3555. See also OMB M-24-04, Fiscal Year 2024 Guidance on Federal Information Security and Privacy Management Requirements (Dec. 4, 2023).

⁸⁰ See Reporting Modernization Adopting Release, *supra* note 5, at n.460 and accompanying text (stating that, "[b]ased upon staff experience, it is [the Commission's] understanding that most closed-end funds strike their NAV on at least a monthly basis," but that funds that do not do so may report information on Form N-PORT by using their internal methodologies consistent with how

ability of investors to review and monitor information about their funds' portfolios. Certain information reported on Form N-PORT is currently nonpublic, even in the report for the third month of the quarter that is otherwise publicly available.⁸³ This aspect of the form remains unchanged by the amendments, and that information—which includes liquidity classifications for individual portfolio investments—will remain nonpublic in individual reports. However, Commission staff may publish aggregate or other anonymized information about the nonpublic elements of reports on Form N-PORT.⁸⁴

Comments on the proposal to increase publication frequency were mixed. Several commenters expressed general support for the proposal because it would increase transparency.⁸⁵ For example, one commenter expressed that the burden on fund administrative staff in implementing increased Form N-PORT reporting requirements does not justify the corresponding lack of transparency based on the commenter's beliefs about the sophistication of funds' systems.⁸⁶ Some commenters that supported the publication of each month's Form N-PORT preferred a publication delay shorter than 60 days. These commenters generally stated that the information would be stale and less useful to investors if delayed by 60 days.⁸⁷ For example, one of these commenters pointed to the extent to

which markets can move over a 30-day period in suggesting more rapid public disclosure, while another urged that concerns about copycatting should not impede more rapid public disclosure.⁸⁸

Some commenters opposed the proposed amendments.⁸⁹ These commenters generally favored maintaining the existing Form N-PORT publication schedule of every third month, with a 60-day delay.⁹⁰ Some commenters expressed that more frequent public disclosure would not benefit fund shareholders.⁹¹ For example, one commenter suggested that shareholders of its open-end funds would not benefit from monthly publication of Form N-PORT data since the funds currently disclose their portfolio holdings on a public website every month. This commenter stated that publication of portfolio information on a fund website is better tailored to providing investors with timely information.⁹² Another commenter expressed that monthly reports on a 60-day lag only offer incrementally more useful information compared to quarterly reports.⁹³ Another commenter suggested that public disclosure of monthly Form N-PORT reports was inconsistent with the Commission's recent determination to exclude the list of a fund's portfolio holdings from tailored shareholder reports.⁹⁴

Some commenters stated that publicizing each month's Form N-PORT information, rather than every third month's information, could increase the risk of predatory trading by other market participants and ultimately harm funds and their shareholders.⁹⁵ Some commenters expressed that publicizing portfolio holdings on a monthly basis could result in other market participants being able to use automated tools to reverse-engineer portfolio decisions to engage in predatory behavior such as front-running or free-riding.⁹⁶ One of these commenters indicated that, since the adoption of Form N-PORT, artificial intelligence use has increased, which

this commenter believed could increase the risk that more frequent publication of Form N-PORT reports would lead to predatory trading.⁹⁷ Some commenters expressed that the decision by certain funds to not disclose portfolio holdings information publicly indicated that each of these funds has determined that disclosing such information is not appropriate for the fund.⁹⁸ For example, one of these commenters asserted that it does not voluntarily disclose more portfolio holdings information than required to protect the fund's intellectual property for the benefit of investors.⁹⁹ The commenter also expressed that actively managed value funds tend to build and liquidate positions over time, so these funds may be particularly vulnerable to predatory trading as a result of more frequent disclosure of portfolio holdings.¹⁰⁰ In addition, the commenter stated that while it tries to time its purchases of new investments to avoid being active in the market at the time it is required to disclose its portfolio, moving to a monthly disclosure schedule would make this more difficult.¹⁰¹ The commenter asserted that this likely would increase trading costs borne by shareholders by exposing investment decisions before they are fully implemented or resulting in condensed buying activity that affects the fund's ability to maintain an optimal degree of price discipline.¹⁰²

After considering the comments, we have determined that publication of information collected on Form N-PORT with a 60-day delay appropriately balances the benefits to investors of receiving additional data on portfolio holdings while mitigating the concerns raised by commenters about predatory trading. The benefits to fund investors and other users of Form N-PORT reports include assisting investors in making more informed investment decisions.¹⁰³ For instance, institutional investors or data analysts assisting retail investors could directly use the monthly information to evaluate portfolios and assess the potential for returns and risks of a particular fund. As another example, data aggregators, broker-dealers, investment advisers, and others that provide investment information to

⁸³ The Commission does not intend to make public the information reported on Form N-PORT with respect to a fund's highly liquid investment minimum (Item B.7), derivatives transactions (Item B.8), derivatives exposure for limited derivatives users (Item B.9), median daily VaR (Item B.10.a), median VaR Ratio (Item B.10.b.iii), VaR backtesting results (Item B.10.c), country of risk and economic exposure (Item C.5.b), delta (Items C.9.f.v, C.11.c.vii, or C.11.g.iv), liquidity classification for individual portfolio investments (Item C.7), or miscellaneous securities (Part D), or explanatory notes related to any of those topics (Part E) that is identifiable to any particular fund or adviser. See General Instruction F of amended Form N-PORT.

⁸⁴ See General Instruction F of Form N-PORT.

⁸⁵ See, e.g., Comment Letter of Brad (Nov. 16, 2022) ("Brad Comment Letter"); Comment Letter of Mathieu Charbonneau (Nov. 10, 2022) ("Charbonneau Comment Letter"); Dane Comment Letter; Myers Comment Letter; Comment Letter of Derek Saucie Raulz (Nov. 16, 2022) ("Raulz Comment Letter"); Comment Letter of Yonatan Gershon (Nov. 20, 2022) ("Gershon Comment Letter").

⁸⁶ See Dane Comment Letter.

⁸⁷ See, e.g., Hof zum Ahaus Comment Letter (suggesting a one-week delay between the end of the month and filing that month's Form N-PORT report and instant publication after filing); Comment Letter of Gregory Brandano (Nov. 11, 2022) ("Brandano Comment Letter") (suggesting a five-day delay); Gershon Comment Letter; Myers Comment Letter (suggesting a lag time before a report is available to the public of either 15 days or a week).

⁸⁸ Hof zum Ahaus Comment Letter; Myers Comment Letter.

⁸⁹ See, e.g., Dodge & Cox Comment Letter I; Comment Letter of Intercontinental Exchange, Inc. (Feb. 14, 2023) ("ICE Comment Letter"); PGIM Comment Letter; Principal Comment Letter.

⁹⁰ See, e.g., Dodge & Cox Comment Letter I; ICI Comment Letter I; PGIM Comment Letter.

⁹¹ See, e.g., ICE Comment Letter; Principal Comment Letter; ICI Comment Letter I.

⁹² See Principal Comment Letter.

⁹³ See ICE Comment Letter.

⁹⁴ See ICI Comment Letter I.

⁹⁵ See, e.g., Dodge & Cox Comment Letter I; ICI Comment Letter I; JP Morgan Comment Letter; PGIM Comment Letter; Principal Comment Letter.

⁹⁶ See JP Morgan Comment Letter. See also ICI Comment Letter I.

⁹⁷ See ICI Comment Letter I.

⁹⁸ See, e.g., Dodge & Cox Comment Letter I; ICI Comment Letter I.

⁹⁹ Dodge & Cox Comment Letter I.

¹⁰⁰ See Dodge & Cox Comment Letter I; Comment Letter of Dodge & Cox (July 12, 2023) ("Dodge & Cox Comment Letter II").

¹⁰¹ Dodge & Cox Comment Letter II.

¹⁰² *Id.*

¹⁰³ See Proposing Release, *supra* note 11, at section II.E.1.b.

fund investors will have more data and in some cases more recent data to use in generating analyses for investors that in turn can help investors to monitor better the extent to which their investment portfolios overlap and to assess how a fund is complying with its stated investment objective, including deviations from that objective (*i.e.*, style drift). In addition, more standardized portfolio disclosures may allow data aggregators and financial professionals to provide information and advice that makes investors better informed about managerial skill by reducing the imbalance of information between fund investors and managers.¹⁰⁴

Although some comments stated that the monthly information would not benefit fund shareholders, having monthly Form N-PORT data available in a standardized format in a single, centralized database will enable investors and other users to analyze the reported data more efficiently than they might otherwise be able to if the data were reported across various platforms and in a non-standardized format. In addition, as discussed in the Proposing Release, many funds voluntarily disclose their monthly portfolio holdings on their websites or through third party data aggregators, making additional portfolio information available to assist investors with their investment decisions, whether by accessing the information directly or benefitting from third-party analysis of the information.¹⁰⁵ Further, most ETFs currently provide full portfolio holdings on their websites every business day as required by 17 CFR 270.6c-11 (rule 6c-11).¹⁰⁶ We recognize that more frequent publication of fund data could also lead to adverse effects on funds by, for example, increasing the likelihood of predatory trading for some funds.¹⁰⁷ However, these adverse effects, which are mitigated by certain aspects of the final amendments, are justified by the

benefits discussed throughout this release.

Despite commenters' concerns, the 60-day delay before the publication of Form N-PORT reports will help deter predatory trading. With the 60-day delay, even if an actively managed fund began to build a position on the last day of the month, that position would not be publicly disclosed on Form N-PORT until approximately two months later. The fund would have that additional two months to continue to build (or shrink) its position without public knowledge of the fund's position. This time period would expand to nearly three months if the fund acquired the position in the beginning of a given month. The same is also true in situations where a fund is exiting a position it previously disclosed.

In addition, the form's existing treatment of miscellaneous securities will help deter predatory trading. When a fund is building a new position in an instrument, the fund may treat that instrument as a miscellaneous security for up to one year if the position does not exceed 5% of the fund and has not been previously disclosed to the public, meaning that information about the fund's position in that instrument remains nonpublic for that period.¹⁰⁸ The ability to report certain newly acquired positions as miscellaneous securities is designed to guard against the premature release of information about these positions and thus deter front running or other predatory trading practices.

In addition, as discussed in the Proposing Release, many funds have decided to voluntarily provide portfolio holdings on their websites on a monthly basis, often delayed 30 days.¹⁰⁹ In addition, many funds now provide monthly information about their portfolio holdings to third party data aggregators that users may access for a fee, generally with a lag of 30 to 90 days.¹¹⁰ The increase in funds publicly disclosing monthly portfolio holdings has decreased the impact that a

requirement for quarterly Form N-PORT holdings information has on the mix of information available to the public, and a monthly, rather than a quarterly, Form N-PORT disclosure regime is now consistent with many funds' existing practice of disclosing portfolio holdings on a monthly basis. Further, these existing disclosure practices—by both passive funds and active funds—suggest that many funds have concluded that the risks of predatory trading, including those risks resulting from the increased use of advanced technology since Form N-PORT was adopted, are justified by the benefits to investors of more information. The amendments will place monthly portfolio holdings data in a single location in a standardized format and timeline that all investors can access without charge so that they may analyze the reported data.

We acknowledge that some funds do not publish monthly portfolio holdings information. We also understand that publishing monthly Form N-PORT portfolio holdings information may result in a higher risk of predatory trading for certain kinds of funds as compared to other funds; for example, funds that are more likely to build or liquidate their positions over a longer time horizon. As discussed above, however, the approach under the final amendments increases the frequency of fund reporting while seeking to minimize the risks of exposing funds to predatory trading by delaying public reporting by 60 days and allowing funds to designate certain investments as miscellaneous securities that will not be disclosed publicly.

In addition, the Investment Company Act requires that all information filed with the Commission pursuant to the Act or any rule or regulation thereunder be made available to the public, unless the Commission makes a required finding.¹¹¹ Specifically, the Commission must find that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. We are not making this finding with respect to disclosing funds' monthly portfolio holding information in Form N-PORT reports publicly. As discussed above, monthly portfolio holding information will benefit investors by allowing them to make more informed investment decisions. In addition, there is evidence of investor demand for this information in that many funds voluntarily provide their monthly portfolio holdings either free of charge to the public or to investors

¹⁰⁴ See *infra* note 234 and accompanying text (discussing related academic research). Further, more frequent reporting of portfolio holding information may improve investors' ability to select between fund managers, allowing them to make better investment allocation decisions. See *infra* note 235 to 236 and accompanying text for discussion of academic research on this topic.

¹⁰⁵ See Proposing Release, *supra* note 11, at paragraph accompanying n.289.

¹⁰⁶ 17 CFR 270.6c-11(c)(1)(i). A small number of "nontransparent" ETFs have received exemptive orders from the Commission permitting them not to disclose their portfolio holdings on a daily basis. As of Dec. 2023, there were an estimated 49 nontransparent ETFs. Several of these nontransparent ETFs voluntarily disclose their complete portfolios on a monthly basis with a one-month lag.

¹⁰⁷ See *infra* section IV.C.2.

¹⁰⁸ Specifically, Form N-PORT permits funds to report as "miscellaneous securities" an aggregate amount of portfolio investments that does not exceed 5% of the total value of the fund's portfolio investments, provided that the securities included in this category are not restricted, have been held for not more than one year prior to the end of the reporting period of the related report, and have not previously been reported by name to the shareholders, or set forth in any registration statement, application, or report to shareholders or otherwise made available to the public. See Parts C and D of Form N-PORT.

¹⁰⁹ See, e.g., *infra* note 230 (discussing a paper estimating that, at year-end 2019, approximately 56% of U.S. equity mutual funds' portfolio disclosures were voluntary monthly disclosures).

¹¹⁰ *Id.*

¹¹¹ See section 45(a) of the Investment Company Act.

willing to pay a premium to third-party platforms to access such information.

The final amendments will not, however, affect the treatment of certain information that funds report on Form N-PORT but that is not made available to the public in any reports.¹¹² In addition, information filed with the Commission on Form N-PORT will remain nonpublic until 60 days after the end of the month to which the information relates. This delay is necessary or appropriate in the public interest and for the protection of investors to mitigate the risk of predatory trading and associated costs for fund shareholders. For this reason, we are not revising the proposed approach to make Form N-PORT information available to the public within a shorter time horizon, as some commenters suggested.¹¹³

We disagree with the commenter that suggested that public reporting of monthly portfolio holdings on Form N-PORT is inconsistent with the Commission's determination to remove the schedule of investments from shareholder reports, as these disclosures serve different purposes.¹¹⁴ Shareholder report requirements are designed to result in concise and visually engaging reports to shareholders that highlight key information that is particularly important for retail investors to assess and monitor their fund investments.¹¹⁵ To this end, the Commission adopted a layered approach, with annual and semiannual shareholder reports providing a graphical representation of holdings to permit all shareholders to monitor and assess their ongoing investment in the fund in a concise, easy to understand pictorial format, while preserving access to the complete schedule of investments in Form N-CSR for shareholders that find this broader information useful.¹¹⁶ In retaining the availability of a fund's schedule of portfolio investments, the Commission stated that this information is designed to enable shareholders to make more informed asset allocation decisions by allowing them to monitor better the extent to which their investment

portfolios overlap and to assess how a fund is complying with its stated investment objective, including any deviations.¹¹⁷

Similar to Form N-CSR, Form N-PORT information is more relevant to financial professionals and investors who desire more in-depth information to make more informed asset allocation decisions. In addition, retail investors may consume information reported on Form N-PORT indirectly through other data users, such as fund analysts or other financial professionals. Thus, the amendments may benefit various types of investors by providing monthly Form N-PORT information in a structured format and in a single, centralized database that lends itself to data analysis. Giving investors access to monthly Form N-PORT information will improve investors' ability to monitor the portfolios of their funds in a systematic fashion and assist investors in choosing the investment products that most closely align with their desired levels of risk, asset exposures, and liquidity profiles.¹¹⁸ This may result from investors, and particularly institutional investors, using Form N-PORT information directly to evaluate fund portfolios and assess the potential for returns and risks of a particular fund(s), while other investors may experience these benefits indirectly through third-party analysis of the information.

3. Other Amendments to Form N-PORT

In addition to the proposed amendments requiring more timely reporting of information and enhancing public transparency of funds' portfolio information, we proposed a few additional amendments to Form N-PORT. The additional amendments included amendments to certain existing items to account for the amendments to make monthly Form N-PORT information available to the public and amendments related to certain entity identifiers. We are generally adopting these changes as proposed, except we are not adopting the proposed amendments to require funds to present portfolio holdings in accordance with Regulation S-X more frequently than currently required.

We proposed amendments requiring a fund to attach its complete portfolio holdings in accordance with Regulation S-X, within 60 days of the end of the reporting period for each month (except for the last month of a fund's second and fourth fiscal quarters). We proposed

the amendments to conform with the requirement that funds file their Form N-PORT structured portfolio schedules on a monthly basis and to make the monthly disclosure more useable for investors. After considering comments, we are not adopting the proposed amendments at this time.

Several commenters opposed the proposed amendments.¹¹⁹ Some commenters expressed concerns that these amendments would result in significant burdens for funds and additional costs to fund shareholders, with no commensurate benefits to shareholders.¹²⁰ For example, some commenters indicated that most funds use "T+1" accounting to record their day-to-day transactions and these funds would therefore need to convert their daily T+1 accounting records into a trade-date based Regulation S-X compliant presentation, which would be extremely time consuming.¹²¹ In addition, some commenters expressed that the amendments are not necessary because portfolio holdings information is already in the public domain.¹²² For example, one commenter stated that this Regulation S-X compliant portfolio holdings information overlaps substantially with the information within Part C of Form N-PORT.¹²³ Some commenters also stated that portfolio holdings information is already available on fund websites.¹²⁴ Some commenters also questioned the existence of investor demand for more frequent Regulation S-X compliant portfolio holdings information.¹²⁵

Some of the commenters that opposed more frequent reporting of Regulation S-X compliant portfolio holdings

¹¹⁹ See, e.g., Brighthouse Comment Letter; Comment Letter of Capital Research and Management Company (Feb. 14, 2023) ("Capital Group Comment Letter"); ICI Comment Letter I; Invesco Comment Letter; JP Morgan Comment Letter; Principal Comment Letter; Comment Letter of SIFMA Asset Management Group (Feb. 14, 2023) ("SIFMA AMG Comment Letter").

¹²⁰ See, e.g., Capital Group Comment Letter; ICI Comment Letter I (stating that, because a Regulation S-X compliant schedule of investments is not necessary for fund shareholders to understand a fund's portfolio holdings, requiring the schedule of investments on a monthly basis would provide little benefit to investors); SIFMA AMG Comment Letter.

¹²¹ See, e.g., Capital Group Comment Letter; ICI Comment Letter I; SIFMA AMG Comment Letter.

¹²² See, e.g., Capital Group Comment Letter; ICI Comment Letter I; Invesco Comment Letter.

¹²³ See Invesco Comment Letter.

¹²⁴ See, e.g., BlackRock Comment Letter; Invesco Comment Letter.

¹²⁵ See, e.g., ICI Comment Letter I; Principal Comment Letter (stating that only a small percentage of its website visitors review the existing Regulation S-X compliant schedules of investments); T. Rowe Comment Letter (stating that its funds' shareholders have not expressed a preference for Regulation S-X compliant schedules).

¹¹² See General Instruction F of amended Form N-PORT. For example, certain information about a fund's liquidity classifications, derivatives transactions, and miscellaneous securities will remain nonpublic.

¹¹³ See *supra* note 87.

¹¹⁴ See *supra* note 94.

¹¹⁵ See Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) [87 FR 72758 (Nov. 25, 2022)] ("Tailored Shareholder Reports Adopting Release"), at section I.B.

¹¹⁶ See *id.* at section II.C.1.a.

¹¹⁷ See *id.* at text accompanying n.400.

¹¹⁸ See Proposing Release, *supra* note 11, at section II.E.1.b.

suggested alternatives involving the use of Part C, which contains portfolio holdings information in a structured, XML format.¹²⁶ For example, one commenter suggested that, instead of providing additional Regulation S–X compliant reporting, the Commission might require funds to post on their websites unstructured extracts that are based on Part C information.¹²⁷ Some other commenters suggested that the Commission create a tool on the SEC website to extract Part C information and present it in an easily readable manner.¹²⁸

Commenters raised issues that merit additional consideration before any further Commission action that might provide investors access to monthly Regulation S–X compliant portfolio schedules. We are persuaded by commenters who expressed that the benefits of the proposed requirement may not justify the costs, particularly given the costs and time currently involved with presenting the fund’s portfolio investments in a manner that is compliant with Regulation S–X and the other sources of portfolio information available to investors. Thus, we are not adopting the proposed requirement that a fund attach its complete portfolio holdings in accordance with Regulation S–X, within 60 days of the end of the reporting period for each month (except for the last month of a fund’s second and fourth fiscal quarters).

We are adopting, as proposed, requirements that a fund report certain return and flow information only for the month that the Form N–PORT report covers, rather than requiring that information for the preceding three months.¹²⁹ The Commission currently requires return and flow information for the preceding three months in a single report to provide investors access to monthly data for a given quarter, since investors currently have access to Form N–PORT reports only for the third month of each quarter.¹³⁰ Because our amendments to the publication frequency of Form N–PORT reporting will give investors access to monthly Form N–PORT reports, we are adopting, as proposed, amendments changing the period for which a fund must report return and flow information to align

with monthly public reporting. Two commenters addressed the proposed amendments to align return and flow reporting with the publication frequency of Form N–PORT and were supportive of the proposed amendments.¹³¹

We are adopting, as proposed, amendments to Part D of Form N–PORT regarding miscellaneous securities to align with the amendments requiring public availability of monthly Form N–PORT reports. Form N–PORT currently contemplates that detailed information about miscellaneous securities, which would remain nonpublic, would only be included in reports filed for the last month of each fiscal quarter.¹³² This is because currently all information reported on Form N–PORT for the first and second months of each quarter is nonpublic, which means there is no need for funds to designate any of their investments for those reporting periods as miscellaneous securities. The amendments to Part D remove the language that limits reporting of nonpublic information about individual miscellaneous securities holdings to reports filed for the last month of each fiscal quarter.¹³³

The amendments to Part D will allow funds in their monthly Form N–PORT reports to report publicly the aggregate amount of miscellaneous securities held in Part C, while requiring funds to provide more detailed information in Part D about the individual holdings in the miscellaneous securities category to the Commission on a nonpublic basis. Although the shift from quarterly to monthly public reporting is intended to improve public transparency of funds’ portfolio holdings, treating information related to miscellaneous securities as nonpublic may serve to guard against the premature release of those securities positions and thus help deter front-running and other predatory trading practices. As a result, public disclosure of individual miscellaneous securities continues to be neither necessary nor appropriate in the public interest or for the protection of investors.¹³⁴ At the same time, it is important for the Commission to receive more detailed information about miscellaneous securities holdings so the Commission has a complete record of a fund’s portfolio for monitoring, analysis, and checking for compliance with Regulation S–X. The only commenter

that addressed this part of the proposal stated that it did not object to these conforming amendments if the amendments increasing the publication frequency of Form N–PORT are adopted.¹³⁵

In addition, we are adopting, as proposed, amendments to certain items and definitions related to entity identifiers in the form. Specifically, we are amending the definition of LEI in the form to remove language providing that, in the case of a financial institution that does not have an assigned LEI, a fund should instead disclose the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.¹³⁶ Instead of classifying an RSSD ID as an LEI for these purposes, the amendments will require funds to identify specifically whether they are reporting an LEI or an RSSD ID, if available.¹³⁷ The amendments will not change the circumstances in which a fund is required to report an LEI or an RSSD ID, if available. The change is designed to improve consistency and comparability of information funds report about the instruments they hold, including issuers of those instruments and counterparties to certain transactions. The only commenter that addressed this part of the proposal stated that it did not oppose this aspect of the proposal.¹³⁸

B. Amendments to Form N–CEN

We are adopting amendments to Form N–CEN as proposed, except we are not adopting the proposed amendment to remove swing pricing disclosure from Form N–CEN. Specifically, we are adopting, as proposed, amendments to Form N–CEN to require funds that are subject to the liquidity rule (rule 22e-4) to identify and provide certain information about service providers a fund uses to fulfill the requirements of that rule. We are also adopting the proposed changes related to entity identifiers. The only commenter that addressed the proposed Form N–CEN amendments that we are adopting was supportive.¹³⁹

The adopted amendments will require a fund to: (1) name each liquidity service provider; (2) provide identifying information, including the legal entity identifier, if available, and location, for each liquidity service provider; (3) identify if the liquidity service provider is affiliated with the fund or its

¹²⁶ See, e.g., ICI Comment Letter I; JP Morgan Comment Letter.

¹²⁷ See JP Morgan Comment Letter.

¹²⁸ See, e.g., BlackRock Comment Letter; ICI Comment Letter I.

¹²⁹ See Item B.5 and Item B.6 of amended Form N–PORT.

¹³⁰ See Reporting Modernization Adopting Release, *supra* note 5, at paragraphs accompanying nn.225, 232, and 250.

¹³¹ See Comment Letter of Guidestone (Feb. 13, 2023); ICI Comment Letter I.

¹³² See Part D of Form N–PORT.

¹³³ See Part D of amended Form N–PORT.

¹³⁴ See Reporting Modernization Adopting Release, *supra* note 5, at section II.A.2.h.

¹³⁵ See ICI Comment Letter I.

¹³⁶ See General Instruction E of amended Form N–PORT.

¹³⁷ See Items B.4, C.1, C.10, and C.11 of amended Form N–PORT.

¹³⁸ See ICI Comment Letter I.

¹³⁹ See Myer Comment Letter.

investment adviser; (4) identify the asset classes for which that liquidity service provider provided classifications; and (5) indicate whether the service provider was hired or terminated during the reporting period.¹⁴⁰ This information will allow the Commission and other participants to track certain liquidity risk management practices.¹⁴¹

Because liquidity classification services have become more widely used, the amendments require information about whether and which liquidity service providers are used, for what purpose, and for what period. Among other things, this information will help us better understand potential trends or outliers in funds' liquidity classifications reported on Form N-PORT; for example, by analyzing classification trends of specific vendors, we may distinguish patterns in how classifications might differ due to vendor models or data. Finally, consistent with our proposed amendments to the definition of LEI in Form N-PORT, we are adopting, as proposed, changes in Form N-CEN to separate the concepts of LEIs and RSSD IDs.¹⁴²

C. Guidance on Open-End Fund Liquidity Risk Management Program Requirements

In 2016, the Commission adopted the liquidity rule, which requires open-end funds to adopt and implement liquidity risk management programs.¹⁴³ The rule is designed to promote effective liquidity risk management, thereby reducing the risk that funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders.¹⁴⁴ The liquidity rule requires: (1) assessment, management, and periodic review of a fund's liquidity risk; (2) classification of the liquidity of each of a fund's portfolio investments into one of four prescribed categories—ranging from highly liquid investments to illiquid investments—including at-least-monthly reviews of these classifications and reporting of monthly classifications on Form N-PORT; (3) determination and periodic review of a highly liquid investment minimum for certain funds;

(4) limitation on illiquid investments; and (5) board oversight.

Since the liquidity rule was implemented, Commission staff has monitored funds' liquidity classifications and observed funds' liquidity risk management programs in practice, including during the market stress event in March 2020. In 2022, the Commission proposed certain amendments to the liquidity rule and, as stated in the Proposing Release, took into account staff outreach.¹⁴⁵ While the Commission is not adopting amendments to the liquidity rule at this time, we are providing guidance for funds subject to the liquidity rule to address questions raised through outreach and monitoring. The guidance relates to the frequency of classifying the liquidity of fund investments, the meaning of “cash” in the rule, and determining and reviewing highly liquid investment minimums.

Frequency of classification. The liquidity rule requires funds to review liquidity classifications more frequently than monthly if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of the fund's investment classifications.¹⁴⁶ Under the rule, liquidity classifications are the basis for monitoring a fund's ongoing compliance with the 15% illiquid investment limit and with the fund's highly liquid investment minimum. The Commission staff observed in fund outreach multiple instances where, at the time of outreach, funds were not prepared to review classifications intra-month in response to changes in relevant market, trading, and investment-specific considerations. The rule requires funds to adopt and implement policies and procedures reasonably designed so that the funds can conduct the required intra-month review of liquidity classifications if such changes in relevant market, trading, and investment-specific conditions have occurred.

Such policies and procedures generally should identify, for example, the type of information a fund will use to identify relevant intra-month changes and to review liquidity classifications intra-month, as well as the timeliness of that information. If a fund lacks information or uses stale information that does not reflect current conditions, it may not be able to identify when intra-month reviews of liquidity classifications are required under the rule. As the Commission has previously

stated, the requirement to review a fund's classification determinations intra-month based on market conditions or other developments helps a fund determine whether its holdings are consistent with its highly liquid investment minimum, as well as the rule's limit on illiquid investments.¹⁴⁷

The Commission has previously provided examples of changes in market, trading, and investment-specific considerations that funds may wish to consider.¹⁴⁸ In addition to those prior examples, with respect to the requirement to consider intra-month changes in investment-specific considerations, funds generally should consider reviewing liquidity classifications if changes in portfolio composition are reasonably expected to materially affect one or more investment classifications. For example, if a fund substantially increases the size of its position in an investment, the fund may reasonably anticipate trading a larger size of that investment, which could materially and adversely affect the liquidity classification of that investment if a lack of market depth for a larger trade size makes it difficult to sell the investment within a particular time frame without the sale causing a significant change in market value. For similar reasons, funds generally should consider classifying newly acquired investments intra-month if acquiring a particular investment is reasonably expected to result in material changes to the liquidity profile of a fund, particularly changes to the fund's liquidity profile that may cause a shortfall below a fund's highly liquid investment minimum or cause the fund to exceed the rule's limit on illiquid investments.

Meaning of cash. To determine whether an investment can be classified as highly liquid or moderately liquid, the liquidity rule requires a fund to consider the time in which it reasonably expects an investment to be “convertible to cash” (*i.e.*, sold and settled) without significantly changing the market value of the investment.¹⁴⁹ The liquidity rule also includes other references to “cash.”¹⁵⁰ As the

¹⁴⁷ See Liquidity Rule Adopting Release, *supra* note 66, at paragraph accompanying n.579.

¹⁴⁸ See *id.*, at paragraph accompanying n.581.

¹⁴⁹ See 17 CFR 270.22e-4(a)(3) (defining convertible to cash) and (a)(6) and (a)(12) (defining highly liquid investment and moderately liquid investment).

¹⁵⁰ See 17 CFR 270.22e-4(a)(6) (defining highly liquid investment to include cash) and (a)(9) (defining in-kind exchange traded fund); 17 CFR 270.22e-4(b)(1)(i)(C) (requiring funds to consider holdings of cash and cash equivalents, as

¹⁴⁰ See Item C.22 of amended Form N-CEN.

¹⁴¹ See Liquidity Rule Adopting Release, *supra* note 66, at n.973.

¹⁴² See Items B.16, B.17, C.5, C.6, C.9, C.10, C.11, C.12, C.13, C.14, C.15, C.16, C.17, C.22, D.12, D.13, D.14, E.2, F.1, F.2, F.4, and Instructions to Item G.1 of amended Form N-CEN.

¹⁴³ See 17 CFR 270.22e-4; Liquidity Rule Adopting Release, *supra* note 66.

¹⁴⁴ See Liquidity Rule Adopting Release, *supra* note 66, at paragraph accompanying n.112.

¹⁴⁵ See Proposing Release, *supra* note 11, at n.14 and accompanying text.

¹⁴⁶ See 17 CFR 270.22e-4(b)(1)(ii).

Commission has previously stated, the term “cash” in the liquidity rule means U.S. dollars and does not include foreign currencies or cash equivalents.¹⁵¹ Thus, funds would need to consider conversion to U.S. dollars when classifying an investment. In addition, non-U.S. dollar currencies are investments that would need to be classified considering conversion to U.S. dollars.¹⁵² Commission staff have observed some international funds considering the time in which an investment would be convertible to a different currency other than U.S. dollars as the relevant period for determining when an investment is convertible to cash, even though the funds pay cash redemptions in U.S. dollars. Commission staff also have observed some funds classifying any currency as a highly liquid investment, regardless of the amount of time it would take to convert that currency to U.S. dollars, because the definition of highly liquid investment refers to cash.

To consider the time in which an international currency investment would be convertible to U.S. dollars, a fund would consider the amount of time it is reasonably expected to take to convert a reasonably anticipated trade size of that currency into U.S. dollars under current market conditions without significantly changing the currency exchange rate. Relevant factors for these purposes generally include, for example, the presence of currency controls, the presence of an active market in forward or spot contracts

exchanging the currency for U.S. dollars, and any delays in currency conversions driven by market structure or operations.

In general, funds should not base liquidity determinations in an international jurisdiction on the ability to sell, dispose of, or settle an investment into the local currency without also considering the ability to convert the local currency into U.S. dollars for purposes of paying shareholder redemptions.¹⁵³ When considering the time in which an international investment (other than an international currency) would be convertible to U.S. dollars, funds generally should take into account two considerations: (1) reasonable expectations of the period of time in which an international non-currency investment can be sold and settled in the local market without significantly changing the market value of the investment; and (2) reasonable expectations of the period of time in which any international currency received upon settlement can be converted to U.S. dollars without significantly changing the currency exchange rate. For purposes of assessing the period of time for a currency conversion under the second consideration, it would be reasonable for a fund to assume that it initiates a hypothetical currency conversion at the same time as the hypothetical sale of the international investment under the first consideration. That is, a fund is not required under the liquidity rule to assume that it can initiate a currency conversion only after the sale and settlement of the international investment.¹⁵⁴ For example, if a fund reasonably expects it could sell and settle a reasonably anticipated trade size of an international investment within three business days without significantly changing the market value of the investment under the first consideration, and the fund reasonably expects that the international currency it would receive upon settlement could likewise be converted to U.S. dollars within the same three business day period without significantly changing

the currency exchange rate under the second consideration, it would be reasonable for the fund to classify the international investment as highly liquid.

In the event of currency controls or similar scenarios in another jurisdiction, a fund’s investments in the relevant jurisdiction, including holdings of the local currency, could become illiquid. Under the liquidity rule, an illiquid investment is an investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment.¹⁵⁵ For these purposes, if a fund does not reasonably expect to be able to convert the local currency into U.S. dollars within seven calendar days because of currency controls or otherwise, then the local currency should be classified as an illiquid investment. This is because if a fund instead focused on its ability to use the local currency in the local market (e.g., its ability to use the currency to acquire other investments in that market within 7 calendar days), without considering the time it would take to transfer the currency to U.S. dollars, the resulting classification of the currency would over-estimate the fund’s liquidity and its ability to meet redemption requests. Further, other investments in that jurisdiction that would be sold or disposed of in exchange for the illiquid local currency also should be classified as illiquid investments. This is because, upon the sale of the investment, it would convert into an illiquid currency investment. As such, classifying these investments as highly liquid, moderately liquid, or less liquid would not be reasonable because they will convert into an illiquid currency.

When a fund’s investments (including currency holdings) in a jurisdiction with currency controls or similar restrictions are illiquid, the fund might exceed the rule’s 15% limit on illiquid investments.¹⁵⁶ In that case, selling the underlying illiquid investment may be a necessary step to reducing the illiquidity of the fund’s portfolio, but it would cause the fund to hold a currency that is an illiquid investment. However, if upon the receipt of the illiquid currency the fund takes reasonable steps to convert that currency to U.S. dollars or to purchase investments that will be

applicable, to assess, manage, and periodically review a fund’s liquidity risk).

¹⁵¹ See Liquidity Rule Adopting Release, *supra* note 66, at n.848 (stating that cash means cash held in U.S. dollars and would not include, for example, cash equivalents or foreign currency). The release also provided an example in which the period of time it took to repatriate or convert a foreign currency to dollars factored into the analysis of how quickly a foreign security could be settled. See *id.*, at paragraph accompanying n.379.

¹⁵² The liquidity rule requires a fund to classify the liquidity of each of its portfolio investments. See 17 CFR 270.22e–4(b)(1)(ii). For purposes of the rule, cash (i.e., U.S. dollars) is always classified as a highly liquid investment, while other investments are classified based on whether they are reasonably expected to be convertible to cash, or to be sold or disposed of, within the identified number of days. When the Commission proposed the liquidity rule, it proposed to require funds to classify each position in a portfolio asset. See Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act Release No. 31835 (Sept. 22, 2015) [80 FR 62273 (Oct. 15, 2015)], at n.160 and accompanying text. When the Commission adopted the liquidity rule, it modified the rule to refer to “investments” to make it clear that the classification requirement is not limited to portfolio assets, and funds also must classify investments that are liabilities. See Liquidity Rule Adopting Release, *supra* note 66, at n.114.

¹⁵³ See Liquidity Rule Adopting Release, *supra* note 66, at paragraph accompanying n.380 (discussing a fact pattern involving international investments and stating that the settlement period for such an investment includes the timeframe in which an international currency received from the sale of an international investment can be repatriated or converted to dollars).

¹⁵⁴ We understand that, in practice, funds may initiate currency conversions before the sale of an international investment settles, which allows a fund to complete the conversion to U.S. dollars more quickly than if it did not initiate the currency conversion until settlement of the underlying sale.

¹⁵⁵ See 17 CFR 270.22e–4(a)(8).

¹⁵⁶ See 17 CFR 270.22e–4(b)(1)(iv) (providing that no fund or in-kind ETF may acquire any illiquid investment if, immediately after the acquisition, the fund or in-kind ETF would have invested more than 15% of its net assets in illiquid investments that are assets).

convertible to U.S. dollars, these actions would reduce the illiquidity of the fund's portfolio.¹⁵⁷ Accordingly, when a fund converts an illiquid international investment into an illiquid local currency as a step toward reducing the fund's illiquid investments, we would not consider the fund as acquiring the illiquid currency in violation of the rule's prohibition on acquiring illiquid investments in excess of the rule's 15% limit.¹⁵⁸

If a fund exceeding the 15% limit on illiquid investments instead were to retain the illiquid currency for purposes of its investment strategy or use the illiquid currency to purchase additional investments that are likewise illiquid (e.g., due to the currency controls), that would be inconsistent with the rule's prohibition on acquiring illiquid investments. As a result, funds that exceed the rule's 15% limit generally should consider taking reasonable steps such that an illiquid currency received from the sale of an investment will not be used for purposes of a fund's investment strategy or to acquire illiquid investments (e.g., by identifying the illiquid currency for conversion to U.S. dollars or for purchase of non-illiquid investments).¹⁵⁹

Highly liquid investment minimums. The liquidity rule requires funds that do not primarily hold assets that are highly liquid investments to have a highly liquid investment minimum.¹⁶⁰ The highly liquid investment minimum requirement is intended to increase the likelihood that a fund will be prepared to meet redemptions without significant dilution of remaining investors' interests in the fund. The Commission has previously provided guidance on how a fund should determine its highly liquid investment minimum, and the rule requires funds to consider specific factors, as applicable.¹⁶¹ We are

reiterating and highlighting certain of this guidance, and particularly focusing on funds with portfolios that are on the lower end of the liquidity spectrum. The Commission previously has underscored the importance of a highly liquid investment minimum that considers a fund's particular risk factors. For example, the Commission has stated that, when considering a fund's investment strategy and portfolio liquidity, a fund that invests significantly in less liquid or illiquid investments, such as a bank loan fund, generally should consider establishing a highly liquid investment minimum that is higher than that of a fund that is more liquid.¹⁶² In addition, funds with investment strategies that have had greater volatility of flows than other investment strategies—or that are reasonably expected to have greater volatility in reasonably foreseeable circumstances—would generally need highly liquid investment minimums that are higher than funds whose strategies tend to entail less flow volatility.¹⁶³ Further, while a line of credit or similar arrangement can facilitate a fund's ability to meet unexpected redemptions and can be taken into consideration when determining its highly liquid investment minimum, we continue to believe that liquidity risk management is better conducted primarily through construction of a fund's portfolio.¹⁶⁴

While the goal of the highly liquid investment minimum is to increase the likelihood that a fund will be better prepared to meet redemptions without significant dilution, we are not dictating how a portfolio manager meets redemptions. For instance, as the Commission has previously stated, the requirement does not mean that a fund should only, or primarily, use its most liquid investments to meet shareholder redemptions.¹⁶⁵ In addition, the requirement does not mean that a fund must continuously maintain a specific level of highly liquid assets and cannot use those assets to meet redemptions.

The only consequence under the liquidity rule of a fund dropping below its highly liquid investment minimum is the triggering of the fund's shortfall policies and procedures, which must include notifying the fund's board of the shortfall at the board's next regularly scheduled meeting or, if the shortfall continues for more than seven consecutive calendar days, notifying the board and filing a confidential report with the Commission on Form N-RN within one business day.¹⁶⁶

D. Technical and Conforming Amendments

We proposed to make technical and conforming amendments to the definition of ETF in Forms N-CEN and N-PORT that would replace language in each definition that refers to “an exemptive rule adopted by the Commission” with a direct reference to rule 6c-11, the Commission's exemptive rule for ETFs. Commenters did not address the proposed amendments. We are adopting these technical amendments as proposed.¹⁶⁷

E. Transition Periods

The Commission proposed for funds to have a compliance period of 12 months from the effective date of the final amendments to Forms N-PORT and N-CEN. In a change from the proposal, however, we are adopting an extended effective date (instead of an extended compliance period), under which the final amendments will become effective on November 17, 2025, that is, a date that we anticipate will be approximately the same as the end of the 12-month compliance period that we proposed. The extended effective date will result in greater uniformity among funds with respect to the filing cadence and public availability of Form N-PORT during the transition period.¹⁶⁸

We are also adopting a tiered approach by providing an additional six-month compliance period for

¹⁵⁷ We recognize that currency controls or similar restrictions could limit a fund's ability to convert the currency to U.S. dollars expeditiously.

¹⁵⁸ See 17 CFR 270.22e-4(b)(1)(iv)(A) (providing that, if a fund or in-kind ETF holds more than 15% of its net assets in illiquid investments that are assets, the person(s) designated to administer the liquidity risk management program must report this occurrence to the board of directors within one business day, and such report must include, among other things, an explanation of how the fund or in-kind ETF plans to bring its illiquid investments that are assets to or below the 15% threshold within a reasonable period of time).

¹⁵⁹ The guidance in this paragraph relates only to the rule's prohibition on acquiring illiquid investments in excess of the rule's 15% limit. The guidance does not affect the classification of the illiquid currency, which would be classified as an illiquid investment regardless of how the fund intends to use the foreign currency.

¹⁶⁰ See 17 CFR 270.22e-4(b)(1)(iii).

¹⁶¹ See Liquidity Rule Adopting Release, *supra* note 66, at section III.D.2.

¹⁶² See, e.g., *id.*, at paragraph accompanying n.680; Proposing Release, *supra* note 11, at n.100 (stating that the vast majority of bank loan investments reported by open-end funds are classified as less liquid).

¹⁶³ See Liquidity Rule Adopting Release, *supra* note 66, at paragraph accompanying n.680.

¹⁶⁴ See *id.*, at text accompanying n.688; see also *id.*, at paragraph accompanying n.259 (noting that, in some situations, borrowing arrangements may not be beneficial to a fund's liquidity risk management to the extent that the fund's use of borrowings to meet redemptions leverages the fund at the expense of non-redeeming investors who would effectively bear the costs of borrowing and the increased risk to the fund created by leverage).

¹⁶⁵ See Liquidity Rule Adopting Release, *supra* note 66, at n.661 and accompanying text.

¹⁶⁶ See 17 CFR 270.22e-4(b)(1)(iii)(A)(3); Part D of Form N-RN.

¹⁶⁷ See General Instruction E of amended Form N-PORT; General Instruction E of amended Form N-CEN.

¹⁶⁸ Under the proposed 12-month compliance period, some funds might have voluntarily complied with the final amendments in advance of the ultimate compliance date. While early compliance would provide the Commission and the public with at least a subset of Form N-PORT data earlier or on a more frequent basis, the potential for inconsistency in practice during the compliance period would make it difficult for the Commission to intake, and both the Commission and the public to utilize, that data in a systematic way. Adopting a single effective date will achieve the dual purpose of providing funds with sufficient time to comply with the final amendments and the Commission and public the ability to meaningfully utilize the data.

smaller entities to comply with the final amendments to Form N-PORT.¹⁶⁹ As a result, larger entities will be required to comply with the Form N-PORT amendments for reports filed on or after the November 17, 2025, effective date, and smaller entities will be required to comply with these amendments for reports filed on or after May 18, 2026. We are adopting this tiered approach to provide existing funds with adequate time to prepare to come into compliance with the final amendments to Form N-PORT. During the additional six-month compliance period, smaller entities that have not yet begun to file monthly reports on Form N-PORT will continue to be subject to requirements under rule 30b1-9 to maintain records of Form N-PORT information within 30 days after month end.¹⁷⁰ For Form N-CEN, all funds will be required to comply with those amendments for Form N-CEN reports filed on or after November 17, 2025.

We generally proposed a one-year compliance period for amendments to Forms N-PORT and N-CEN for all funds that would be subject to the amendments, regardless of asset size.¹⁷¹ We solicited comment on whether the

transition period should be shorter or longer, and whether it should be the same for all funds. The Proposing Release contained additional proposed amendments that are not being adopted at this time, including certain reporting amendments (e.g., reporting certain swing pricing- and liquidity-related information on Form N-PORT) and significant non-reporting amendments (e.g., requirements to use swing pricing and implement a hard close requirement, as well as amendments to the liquidity rule). For the proposed non-reporting amendments, we separately proposed 12- and 24-month compliance periods, depending on the relevant amendment.

We received several comments about the proposed compliance period, but many of those commenters focused specifically on the compliance periods for the proposed non-reporting amendments that we are not adopting at this time. We received a few comments about the compliance period as it relates to the final amendments, but the context of the letters suggests that commenters were likely envisioning having to engage in implementation efforts for the full scope of the proposal during the same period.

Some commenters, as a general matter, stated that the proposed amendments are substantial and complex and that more time is needed.¹⁷² These commenters were commenting on the Proposing Release as a whole. One commenter stated that an appropriate compliance period would depend on what the Commission ultimately adopts. This commenter also suggested that the Commission should provide smaller funds with more time to comply with any final amendments to ease compliance burdens, as smaller funds can leverage the experiences and learnings gained by larger funds going first.¹⁷³ Another commenter stated the transition period must be considered in the context of other recently adopted Commission rules that will also have concurrent compliance periods.¹⁷⁴

One commenter requested a 30-month transition period for all updated reporting requirements.¹⁷⁵ This comment referred to all reporting requirements, including those that we are not adopting in this release. Another commenter stated that a one-year

compliance date is insufficient and recommended a 24-month transition to allow time for the industry to improve their processes and for vendors to adjust their systems, including adjustments to align with amendments to the liquidity classification process and associated reporting requirements (e.g., reporting liquidity classifications of individual investments), neither of which will be necessary under the final amendments.¹⁷⁶ This commenter stated that, as a third-party provider of information for some funds' Form N-PORT reports, it anticipated that some funds using its services would need additional time to improve their processes around month-end holdings compilation and preparation of the requests they submit to the provider.

After consideration of comments, we are adopting an extended effective date of longer than 12 months for both Form N-PORT and Form N-CEN, and we are providing an additional compliance period of six months beyond the effective date for smaller entities to comply with the final amendments to Form N-PORT.¹⁷⁷ We are adopting this tiered approach to provide existing funds with adequate time to prepare to come into compliance with the final amendments. Smaller entities will benefit from having an additional six months to come into compliance with the final amendments for Form N-PORT and will potentially benefit from the lessons learned by larger entities during that time period. We are not providing additional time for smaller entities for Form N-CEN due to the limited changes.

While some commenters suggested that additional time is needed, commenters were, in part, anticipating the need for more time in consideration of the potential for overlapping implementation of the other proposed amendments, which we are not adopting at this time. Funds are already required to produce monthly data upon request by Commission staff and required to adhere to the 30-day deadline for collecting the required information for recordkeeping purposes.

¹⁷⁶ See ICE Comment Letter.

¹⁷⁷ With respect to the compliance period, one commenter requested that the Commission consider interactions between the proposed rule and other recent Commission rules. See *supra* note 174. In determining compliance dates, the Commission considers the benefits of the amendments as well as the costs of delayed compliance dates and potential overlapping compliance dates. For the reasons discussed throughout the release, to the extent that there are costs from overlapping compliance dates, the benefits of the rule justify such costs. See *infra* section IV for a discussion of the interactions of the final amendments with certain other Commission rules.

¹⁶⁹ For purposes of the final rules' transition periods, larger entities are funds that, together with other investment companies in the same "group of related investment companies" (as such term is defined in 17 CFR 270.0-10) have net assets of \$1 billion or more as of the end of the most recent fiscal year, and smaller entities are funds that together with other investment companies in the same "group of related investment companies" have net assets of less than \$1 billion as of the end of the most recent fiscal year. This standard is consistent with prior Commission approaches for tiered compliance dates based on asset size for rules affecting registered investment companies. See, e.g., Reporting Modernization Adopting Release, *supra* note 5; Liquidity Rule Adopting Release, *supra* note 66; Inline XBRL Filing of Tagged Data, Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Sept. 17, 2018)]. In our experience, this threshold is a reasonable means of distinguishing larger and smaller entities for purposes of tiered compliance dates for rules affecting investment companies. We estimate that, as of Dec. 2023, 77% of registered investment companies would be considered to be larger entities. These larger entities hold approximately 98.7% of aggregate assets of registered investment companies. These estimates are based on data reported in response to Items B.5, C.19, and F.11 on Form N-CEN.

¹⁷⁰ Amendments to rule 30b1-9 requiring funds to file monthly reports within 30 days of month end will be effective Nov. 17, 2025. However, in light of the tiered transition period that will allow smaller entities to continue to file on a quarterly basis until May 18, 2026, we are amending rule 30b1-9 to maintain the recordkeeping requirement for these funds until May 18, 2026. If a fund begins to file monthly reports within 30 days of month end before that date, it will not be required to maintain records under the rule beginning with the first month it files a monthly report on Form N-PORT at that frequency.

¹⁷¹ We proposed a 24-month compliance period for swing pricing-related amendments to Forms N-PORT and N-CEN. As discussed above, we are not adopting those amendments.

¹⁷² See, e.g., Comment Letter of Federated Hermes, Inc. (Feb. 14, 2023) ("Federated Hermes Comment Letter"); Capital Group Comment Letter; Comment Letter of Morgan Stanley Investment Management Inc. (Feb. 14, 2023) ("Morgan Stanley Comment Letter").

¹⁷³ See ICI Comment Letter I.

¹⁷⁴ See Morgan Stanley Comment Letter.

¹⁷⁵ See Fidelity Comment Letter.

We also are not significantly increasing the amount of information funds are required to report. The compliance period that we are adopting should allow funds sufficient time to make updates to processes and technologies to produce and submit the data on a monthly basis and incorporate the additional amendments that we are adopting.

III. Other Matters

Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has designated the final amendments as a “major rule” as defined by 5 U.S.C. 804(2). The Commission considers the provisions of the final amendments to be severable to the fullest extent permitted by law. “If parts of a regulation are invalid and other parts are not,” courts “set aside only the invalid parts unless the remaining ones cannot operate by themselves or unless the agency manifests an intent for the entire package to rise or fall together.” *Bd. of Cnty. Commissioners of Weld Cnty. v. EPA*, 72 F.4th 284, 296 (D.C. Cir. 2023); see *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988). “In such an inquiry, the presumption is always in favor of severability.” *Cnty. for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1394 (D.C. Cir. 1990). Consistent with these principles, while the Commission believes that all provisions of the final amendments are fully consistent with governing law, if any of the provisions of these amendments, or the application thereof to any person or circumstance, is held to be invalid, the Commission intends that 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. In particular, the Form N-PORT amendments relating to filing frequency operate independently from the amendments to publication frequency in that the Commission’s use of more timely information operates independently from publication of that information. Additionally, the amendments to Form N-PORT operate independently from the amendments to Form N-CEN.

IV. Economic Analysis

A. Introduction

Reports on Form N-PORT are an important source of information for the Commission and its staff. This information helps the Commission monitor industry trends, identify risks, inform policy and rulemaking, and assists the staff in examination and

enforcement efforts. Currently, the Commission receives reports on Form N-PORT on a quarterly basis, 60 days after the end of the relevant quarter, with each quarterly report containing month-end information for each month in the quarter. The current delay between the end of the month to which the information relates and when the Commission receives Form N-PORT data with this information has limited the Commission staff’s ability to develop a more complete understanding of the market on a timely basis, which is particularly important during major market events. Separate from the Commission’s use of information reported on Form N-PORT, investors also benefit from information about funds’ portfolios because it aids them in making more informed investment decisions. However, investors do not currently have access to uniform portfolio holdings of every registered fund for each month; rather, they have access to Form N-PORT portfolio data for only the third month of the quarter, which may hamper their ability to assess the portfolio composition trends of funds they invest in.¹⁷⁸

The Commission is adopting amendments to Form N-PORT that require timelier and more frequent reporting of Form N-PORT information to the Commission, more frequent public disclosure, and amendments to Form N-CEN that introduce new reporting requirements in connection with liquidity service providers.¹⁷⁹ Together, these amendments will improve regulatory oversight of investment companies’ activities and benefit market participants by increasing transparency of funds’ portfolio data. This, in turn, will enhance the ability of investors to review and monitor information about their funds’ portfolios and aid them in

making more efficient portfolio allocation decisions.

The Commission has considered the economic effects of the amendments.¹⁸⁰ Where possible, we have attempted to quantify the economic effects. In some cases, however, we are unable to quantify the economic effects because we lack the information necessary to provide a reasonable and reliable estimate. For example, the final amendments could reduce the amount of time and effort investors require to make an investment decision. We do not have data on the extent to which the final amendments would reduce the amount of time and effort investors require to make an investment decision. In addition, because the final amendments facilitate the evaluation and comparison among registered funds, we may observe a change in investment across the affected funds. We do not have data that would allow us to estimate the extent to which we may observe such a change. Further, the broader economic effects, such as those related to efficiency, competition, and capital formation, are inherently difficult to quantify with any degree of certainty. For example, it is inherently difficult to quantify with certainty the degree to which investors would reallocate their portfolios as a result of the final amendments and consequent effects of this reallocation on competition in the registered fund sector. Our inability to quantify certain costs, benefits, and effects does not imply that such costs, benefits, or effects are less significant. Nevertheless, as described more fully below, the Commission is providing both a qualitative assessment and quantified estimate of the economic effects, where feasible.

¹⁷⁸ Monthly portfolio holdings of certain open-end and closed-end funds may also be available on funds’ websites, as well as for a fee through third-party data aggregators. Voluntary disclosures of monthly portfolio holdings that are currently publicly available may be inconsistent across funds and over time and may vary in format, presentation, or ease of access.

¹⁷⁹ We are also adopting technical and conforming amendments to certain existing items to account for the amendments to make monthly Form N-PORT information available to the public and amendments to certain entity identifiers. In addition, we are making technical and conforming amendments to the definition of ETF in Forms N-CEN and N-PORT that would replace language in each definition that refers to “an exemptive rule adopted by the Commission” with a direct reference to rule 6c-11, the Commission’s exemptive rule for ETFs. We do not anticipate any economic effects to result from these technical and conforming amendments.

¹⁸⁰ Section 2(c) of the Act and section 3(f) of the Exchange Act direct the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in, or consistent with, the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider among other matters the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The analysis below addresses the likely economic effects of the amendments, including the anticipated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this release.

B. Baseline

1. Regulatory Baseline

The regulatory baseline against which the costs, benefits, and the effects on efficiency, competition, and capital formation of the final rules are measured consists of the current state of the securities markets and the current regulatory framework with respect to registered management investment companies and ETFs organized as unit investment trusts (“funds”).¹⁸¹

Funds are required to file periodic reports on Form N–PORT about their portfolios and each of their portfolio holdings as of month end. Currently, funds file these reports on a quarterly basis, with each report due 60 days after the end of a fund’s fiscal quarter. While each report includes month-end portfolio information for each month in the relevant fiscal quarter, only information about portfolio holdings for the third month of each fiscal quarter is made available to the public upon filing, while information for the first and second month of each fiscal quarter remains confidential. Funds are also currently required to maintain the data Form N–PORT requires within 30 days of a month end for recordkeeping purposes.¹⁸²

A fund may report certain portfolio holdings as miscellaneous securities, meaning that information about these holdings would remain nonpublic for up to a year, provided that the combined value of the positions reported as miscellaneous securities does not exceed 5% of the total value of a fund’s investments and that these positions have not been previously disclosed to the public.¹⁸³

Part F of Form N–PORT also requires a fund to attach a complete schedule of portfolio holdings for the end of the first and third quarters of the fund’s fiscal year, presented in accordance with Regulation S–X, within 60 days after the end of the reporting period. Further, ETFs, including actively managed ETFs, generally are currently required to provide full portfolio holdings on their websites every business day.¹⁸⁴ A small number of “non-transparent” ETFs have received exemptive orders from the Commission permitting them not to disclose their portfolio holdings on a daily basis. Monthly portfolio holdings of certain funds may also be available on their websites, as well as through third-party data aggregators (typically

for a fee), generally on a lagged basis (e.g., 15, 30, 45, or more days after a month end). However, such more frequent publication and/or aggregation by third parties of portfolio data is voluntary.

Registered investment companies, other than face amount certificate companies,¹⁸⁵ must also report census-type information to the Commission annually on Form N–CEN. Required information includes, among other things, certain identifying information about fund service providers, such as the fund’s custodian, transfer agent, pricing service, and others. Finally, on both Form N–PORT and Form N–CEN, funds are required to provide the LEI as part of the identifying information for certain entities, including issuers of portfolio securities, counterparties to certain transactions, and service providers. The current definition of LEI in Forms N–PORT and N–CEN provides that, in the case where a fund is reporting information about a financial institution and the financial institution does not have an assigned LEI, a fund should instead disclose the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.¹⁸⁶

In addition, the economic analysis appropriately considers existing regulatory requirements, including recently adopted rules, as part of the economic baseline against which the costs and benefits of the final amendments are measured.¹⁸⁷ Some commenters requested that the Commission consider interactions between the economic effects of the proposal and other recent Commission proposals.¹⁸⁸ However, the best

assessment of how the world would look in the absence of the proposed or final action typically does not include recently proposed actions, because that would improperly assume the adoption of those proposed actions. Therefore, the Commission has considered three adopted rules mentioned by the commenters: the Names Rule Adopting Release,¹⁸⁹ the Settlement Cycle Adopting Release,¹⁹⁰ and the Tailored Shareholder Reports Adopting Release.¹⁹¹ In addition, the Commission also considered the Customer Notification Adopting Release.¹⁹² These

¹⁸⁹ Names Rule Adopting Release, *supra* note 70. The amendments broaden the scope of the requirement for certain funds to adopt a policy to invest at least 80% of the value of their assets in accordance with the investment focus that the fund’s name suggests, and include other changes to enhance the protections this requirement is designed to provide; require enhanced prospectus disclosure for terminology used in fund names; and impose related notice, recordkeeping, and reporting requirements. The compliance date for the final amendments is Dec. 11, 2025, for larger entities and June 11, 2026, for smaller entities. *See id.* at sections II.H, IV.D.3.

¹⁹⁰ Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 96930 (Feb. 15, 2023) [88 FR 13872 (Mar. 6, 2023)] (“Settlement Cycle Adopting Release”). The rules and rule amendments adopted in the Settlement Cycle Adopting Release shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date. To facilitate an orderly transition to a shorter settlement cycle, a new rule also establishes requirements related to completing allocations, confirmations, and affirmations no later than the end of trade date for the processing of institutional transactions subject to the rule; requires registered investment advisers to make and keep records of each confirmation received, and of any allocation and each affirmation sent or received, with a date and time stamp for each allocation and affirmation indicating when it was sent or received; and requires clearing agencies that provide a central matching service to establish, implement, and enforce policies and procedures reasonably designed to facilitate straight-through processing and to file an annual report regarding progress with respect to straight-through processing. With certain exceptions, the rule had a compliance date of May 28, 2024. *See id.* at section VII.

¹⁹¹ Tailored Shareholder Reports Adopting Release, *supra* note 115. The Commission amended the requirements for annual and semiannual shareholder reports provided by mutual funds and exchange-traded funds to highlight key information for investors. The Commission also adopted amendments to the advertising rules for registered investment companies and business development companies to promote more transparent and balanced statements about investment costs. The compliance date for all of these amendments was July 24, 2024. *See id.* at section II.J.

¹⁹² Regulation S–P: Privacy of Consumer Financial Information and Safeguarding Customer Information, Investment Company Act Release No. 35193 (May 15, 2024) [89 FR 47688 (Jun. 3, 2024)] (“Customer Notification Adopting Release”). The Commission amended Regulation S–P to require brokers, dealers, funding portals, investment companies, registered investment advisers, and transfer agents registered with the Commission or another appropriate regulatory agency to adopt written policies and procedures for incident

¹⁸¹ *See supra* note 2.

¹⁸² *See* rule 30b1–9.

¹⁸³ *See supra* note 108 for a detailed description of this provision.

¹⁸⁴ *See* rule 6c–11(c)(1)(i).

¹⁸⁵ A face-amount certificate company is a type of company that issues to investors debt securities of a specified value.

¹⁸⁶ *See* General Instruction E of Form N–PORT and General Instruction E of Form N–CEN.

¹⁸⁷ *See, e.g., Nasdaq v. SEC*, 34 F.4th 1105, 1111–15 (D.C. Cir. 2022). This approach also follows SEC staff guidance on economic analysis for rulemaking. *See* SEC Staff, *Current Guidance on Economic Analysis in SEC Rulemaking* (Mar. 16, 2012), available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf (“The economic consequences of proposed rules (potential costs and benefits including effects on efficiency, competition, and capital formation) should be measured against a baseline, which is the best assessment of how the world would look in the absence of the proposed action.”); *id.* at 7 (“The baseline includes both the economic attributes of the relevant market and the existing regulatory structure.”).

¹⁸⁸ *See, e.g.,* ICI Comment Letter I; PIMCO Comment Letter; BlackRock Comment Letter; Morgan Stanley Comment Letter; Comment Letter of Center for Capital Markets Competitiveness, U.S. Chamber of Commerce (July 25, 2023) (“CCMC Comment Letter”); Comment Letter of Investment Company Institute (Aug. 17, 2023) (“ICI Comment Letter II”).

adopted rules are part of the baseline against which this economic analysis considers the benefits and costs of the final amendments.

2. Affected Entities

The amendments to the filing and public disclosure frequency of Form N-PORT reports will affect all registered

funds that are currently required to file reports on Form N-PORT. Table 1 below lists registered fund counts along with their aggregate net assets by type.¹⁹³

TABLE 1—FUNDS REQUIRED TO FILE FORM N-PORT BY TYPE, AS OF DEC. 31, 2023

Fund type	Total	
	Number	Net assets, \$ trillion
1. Open-end funds registered on Form N-1A:		
a. Mutual funds required to file Form N-PORT ¹	8,810	\$21.10
b. ETFs: ²	3,048	6.38
i. non-transparent ETFs ³	49	0.01
ii. daily website disclosure required ⁴	2,999	6.38
2. Closed-end funds registered on Form N-2 ⁵	684	0.36
3. ETFs that are UITs registered on Form N-8B-2 ⁶	4	0.75
4. Variable annuity separate accounts registered on Form N-3 ⁷	15	0.23
Total	12,561	28.82

Notes:

1. Mutual funds are identified as those funds reported in Item B.6.a of Form N-CEN that are not identified as ETFs in Item C.3.a.i of Form N-CEN. Money market funds are excluded from the number of mutual funds, as they are not required to file Form N-PORT. We use information reported in Item C.3.g of Form N-CEN to identify money market funds and exclude 327 money market funds that hold approximately \$6.31 trillion in net assets from the total number of mutual funds in order to estimate the number of mutual funds required to file Form N-PORT.

2. ETFs registered as open-ended funds are identified on Item C.3.a.i of Form N-CEN. UIT ETFs and exchange-traded managed funds are excluded from these ETF totals and presented in a separate line item.

3. Non-transparent ETFs are not subject to daily website disclosure of their portfolio holdings. The estimate for the number of non-transparent ETFs is based on the staff analysis of funds that have been granted exemptive relief to operate actively managed ETFs that do not provide daily portfolio transparency (non-transparent ETFs).

4. ETFs identified on Item C.3.a.i of Form N-CEN excluding 49 non-transparent ETFs. Among the ETFs required to disclose their portfolio holdings daily on their websites, we identify 960 in-kind ETFs that hold approximately \$1.84 trillion in net assets, based on Item E.5 of Form N-CEN.

5. Closed-end funds are identified on Form N-CEN, Item B.6.b.

6. UIT ETFs are identified in Form N-CEN Item B.6.g, and are also reported in Item E of Form N-CEN. These include 3 in-kind ETFs and 1 not in-kind ETF.

7. Variable annuity separate accounts are identified on Form N-CEN, Item B.6.c.

We estimate that there are 12,561 funds currently required to file reports on Form N-PORT that hold approximately \$28.82 trillion in assets (approximately 82% of registered funds' assets). Different types of affected funds may be affected differently by the amendments to Form N-PORT. Among the affected funds, there are 8,810 mutual funds that represent approximately 73% of the affected funds' assets, 3,048 ETFs registered as open-end funds that represent approximately 22.1% of the affected

funds' assets, 684 closed-end funds that represent approximately 1.2% of the affected funds' assets, 4 ETFs registered as unit investment trusts that represent approximately 2.6% of assets of all affected funds, and 15 variable annuity separate accounts that represent approximately 0.8% of assets of all affected funds. Among the ETFs registered as open-end funds, 49 are non-transparent ETFs with assets of \$0.01 trillion in assets and 2,999 are ETFs for which daily website portfolio

disclosure is required, with assets of \$6.38 trillion.

Table 2 below lists affected fund counts along with their aggregate net assets by fiscal year end.¹⁹⁴ Among the affected funds, there is variation in the fiscal year end. The most common fiscal year end used by the affected funds is December (27.9% of funds), the second most common fiscal year end is October (18.4% of funds), and March is the third most common fiscal year end (8.8% of funds).

response programs to address unauthorized access to or use of customer information. These must include procedures for providing timely notification to individuals affected by an incident involving sensitive customer information with details about the incident and information designed to help affected individuals respond appropriately. Among other things, the amendments also extended to transfer agents the requirements to safeguard customer records and information, and they broadened the scope of the information covered by those requirements. The compliance date for larger entities is Dec. 3, 2025, and June 3, 2026, for smaller entities. See Customer Notification Adopting Release, section II.F.

¹⁹³ Form N-CEN provides census-type information about registered funds, while Form N-PORT provides detailed information about fund activities. Because Form N-PORT does not include

information about fund types, we use information reported on Form N-CEN to estimate the number of affected funds for each type of fund. We use information reported to the Commission for each fund as of Dec. 31, 2023, incorporating filings and amendments to filings received through Aug. 1, 2024. Net assets are monthly average net assets during the reporting period identified on Item C.19.a of Form N-CEN and validated with Bloomberg (for ETFs). Current values are based on the most recent filings and amendments, which are based on fiscal years and are therefore not synchronous. Submissions of Form N-CEN reports are required on a yearly basis. Therefore, these estimates do not include newly established funds that have not completed their first fiscal year and, therefore, have not filed on Form N-CEN yet. These estimates also do not account for the funds that have been terminated since the last Form N-CEN

report was filed. Therefore, the estimates for the number of funds and their net assets may be over- or under-estimated.

¹⁹⁴ We use information reported on Form N-PORT to the Commission for each fund as of Dec. 31, 2023, incorporating filings and amendments to filings received through Aug. 1, 2024. Fiscal year is reported in Item A.3.a of Form N-PORT. Net assets are reported in Item B.1.c of Form N-PORT. We note that the total number of the affected funds in this table (12,598 funds) differs from the number based on the Form N-CEN data in Table 1 (12,598 funds) because Form N-PORT is submitted on a less delayed basis compared to Form N-CEN; thus, it may include newly established funds that have not completed their first fiscal year and, therefore, have not filed the Form N-CEN yet, as well as funds that have been terminated since the last Form N-CEN was filed.

TABLE 2—REGISTERED FUNDS BY FISCAL YEAR END, AS OF DEC. 31, 2023

Fiscal year end	Number of funds		Net assets	
	No.	% of total	\$, trillion	% of total
31-Jan	189	1.5	\$0.59	1.9
28-Feb	414	3.3	1.94	6.1
31-Mar	1,092	8.7	2.92	9.2
30-Apr	517	4.1	0.84	2.7
31-May	638	5.1	1.13	3.6
30-Jun	788	6.3	1.21	3.8
31-Jul	637	5.1	1.11	3.5
31-Aug	1,072	8.5	2.40	7.6
30-Sep	1,093	8.7	3.54	11.2
31-Oct	2,328	18.5	5.30	16.7
30-Nov	385	3.1	0.78	2.4
31-Dec	3,445	27.3	9.95	31.4
Total	12,598	100.0	31.72	100.0

The amendments to Form N-CEN will affect all registered investment companies that are required to file reports on Form N-CEN. Based on Form N-CEN filing data as of December 31, 2023, there are 2,749 such registrants. In addition, certain amendments will only affect registered investment companies with funds that are subject to the liquidity rule. We estimate that there are 1,257 registrants that have funds subject to the liquidity rule.¹⁹⁵

C. Benefits and Costs of the Amendments

1. Form N-PORT Filing Frequency

The Commission is adopting the requirement for funds to file Form N-PORT reports within 30 days of month end, as proposed. This amendment will provide the Commission with more timely information about funds' portfolio holdings and therefore enhance the Commission's ability to oversee such funds. Some commenters agreed with this assessment.¹⁹⁶ For example, one commenter stated that monthly Form N-PORT filings would enhance the Commission's ability to effectively oversee funds and monitor their activities.¹⁹⁷ More frequent and more timely Form N-PORT data will allow the Commission to conduct more targeted and timelier monitoring efforts, to analyze risks and trends more

accurately, and to better assess the breadth and magnitude of potential impacts of market events and stress affecting particular issuers, asset classes, counterparties, or market participants.¹⁹⁸ For example, if a fund's portfolio is affected by a particular market stress event, the Commission will be better equipped to assess the severity of such an event and frame potential regulatory responses in a timelier manner. For example, having less delayed Form N-PORT data during market stress events would enhance the ability of the Commission staff to determine if impacts on funds are isolated or widespread and respond appropriately.¹⁹⁹ One commenter supported this view and stated that more current information "would have been beneficial to regulators and policymakers in crafting regulatory and legislative responses to the economic effects of the COVID-19 pandemic."²⁰⁰

In addition, the Commission would be able to better identify areas in need of more timely regulatory oversight and assessment, which should increase both the efficiency and effectiveness of its programs and, thus, increase investor protection. Fund investors will benefit, as timelier portfolio information will help the Commission to assess risks as they emerge and address them with appropriate regulatory responses, if any, thereby reducing potential investor harm and market disruptions.

The amendment requiring funds to file Form N-PORT reports monthly within 30 days of the month end will introduce new costs to the affected funds. In the Proposing Release, we stated that we did not expect these costs

to be substantial, as funds are already required to adhere to the 30-day deadline after each month for recordkeeping purposes pursuant to rule 30b1-9.²⁰¹ We also stated that, to the extent it is less efficient for fund groups to submit on a monthly basis instead of in one batch after a quarter-end, the costs borne by fund groups may marginally increase under the amendment. Some commenters disagreed with this assessment, stating that the amendments would lead to additional cost because it would compress the time available to compile, review, correct, and file the data required by Form N-PORT.²⁰² Some commenters also stated that submission on a monthly basis would be less efficient for fund groups and indicated that monthly filing would increase burdens on funds and fund service providers and costs to shareholders.²⁰³

We recognize that, although funds currently are required to maintain the information necessary to prepare their reports on Form N-PORT within 30 days after each month end, there are additional steps that service providers and/or advisers currently take prior to the filing of Form N-PORT with the Commission. In particular, some commenters stated that filing this information involves additional steps that funds do not undertake for recordkeeping, such as data validation and data tagging.²⁰⁴ Therefore, the amendments will introduce costs related to performing these steps more frequently. This, in turn, may lead to

¹⁹⁵ Registrants required to file Form N-CEN are identified in Form N-CEN Item B.1.c. Some funds, such as in-kind ETFs, while subject to the liquidity rule, are not subject to the liquidity classification requirements of the liquidity rule. Therefore, to the extent that some of the estimated 1,257 registrants only have funds that are in-kind ETFs, the number of affected registrants may be overestimated.

¹⁹⁶ See, e.g., Better Markets Comment Letter; Dane Comment Letter; Invesco Comment Letter; BlackRock Comment Letter; Hof zum Ahaus Comment Letter; Myers Comment Letter; ICI Comment Letter I; PIMCO Comment Letter.

¹⁹⁷ Invesco Comment Letter.

¹⁹⁸ See also *supra* section I.

¹⁹⁹ See also section II.A.1 for additional discussion of benefits of increased filing frequency to the regulatory function of the Commission.

²⁰⁰ See Better Markets Comment Letter.

²⁰¹ Rule 30b1-9.

²⁰² See, e.g., BlackRock Comment Letter; ICI Comment Letter I; PIMCO Comment Letter; T. Rowe Price Comment Letter.

²⁰³ See, e.g., Brighthouse Comment Letter; PGIM Comment Letter; Principal Comment Letter; T. Rowe Price Comment Letter.

²⁰⁴ See, e.g., ICI Comment Letter I; Invesco Comment Letter.

increased costs related to service provider fees, hiring more personnel, and upgrading systems, which may be borne by fund shareholders.²⁰⁵ Specifically, as one commenter stated, a monthly reporting regime would increase costs associated with the preparation, review, and filing of Form N-PORT reports and funds would need to expand vendor engagements, increase human resources, and develop new systems, processes, and procedures.²⁰⁶

One commenter stated that some funds estimate that filing Form N-PORT monthly would result in an additional cost of \$5,000 per fund per year.²⁰⁷ Another commenter provided an estimate of the joint ongoing internal staffing costs of \$900,000 per year after meeting accelerated filing requirements and supporting the proposed increase in filing frequency of Regulation S-X compliant portfolio information on Part F of Form N-PORT.²⁰⁸ This estimate appears to reflect the total cost for the fund group (and not per fund) and given that the commenter stated that it manages 197 funds that file Form N-PORT,²⁰⁹ the average per fund cost for this commenter is approximately \$4,569 per year. Consistent with these commenters' assessment, we estimate the average cost increase due to the final amendments for funds that use third-party vendors to prepare Form N-PORT to be around \$6,100 per fund per year,²¹⁰ and around \$4,940 per fund per year²¹¹ for funds that process filings internally.

²⁰⁵ See, e.g., ICI Comment Letter I; Principal Comment Letter; T. Rowe Price Comment Letter.

²⁰⁶ See Brighthouse Comment Letter.

²⁰⁷ See SIFMA AMG Comment Letter.

²⁰⁸ See T. Rowe Price Comment Letter. Because we are not adopting the amendments to Part F to require more frequent reporting of Reg. S-X compliant schedules of investments, and the commenter did not separately provide a cost for the acceleration of the filing deadline, this numerical estimate should be adjusted down.

²⁰⁹ See *id.*

²¹⁰ The estimate is based on the following calculations: \$2,100 (blended hourly rate for a compliance attorney and a senior programmer at \$420 for 5 hours) + \$4,000 (costs for external services) = \$6,100. The estimate of 5 hours reflects an initial time cost of 6 hours, annualized over a 3-year period, with an estimated ongoing annual time cost of 3 hours. Salaries for estimates in the Economic Analysis are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. See Table 3 (and accompanying footnotes, which contain additional details about these estimates).

²¹¹ The estimate is based on the following calculations: \$2,940 (blended hourly rate for a compliance attorney and a senior programmer at \$420 for 7 hours) + \$2,000 (costs for external services) = \$4,940. The estimate of 7 hours reflects an initial time cost of 6 hours, annualized over a 3-year period, with an estimated ongoing annual

Some commenters stated that the costs of moving from quarterly to monthly reporting may be more significant for certain funds. For example, commenters stated that funds that use third parties to provide certain information for Form N-PORT reports may incur higher costs, relative to funds that prepare Form N-PORT reports internally, in order to improve processes around month-end holdings compilation and preparation of the requests they submit to the provider.²¹² Consistent with our estimates above, we agree with the commenters that funds that use third-party providers may experience higher costs (\$6,100 per fund per year) compared to funds that prepare Form N-PORT internally (\$4,940 per fund per year).

Another commenter stated that certain closed-end funds may experience larger costs because these funds may not calculate NAV on a monthly basis or may calculate it with a significant delay, due to the assets they hold, and therefore the amendment may cause these closed-end funds to change their valuation processes in order to be able to report the fund's NAV in each monthly Form N-PORT report.²¹³ We disagree with the commenter for the reason that funds are currently required to maintain in their records monthly information they are required to report on Form N-PORT within 30 days of each month, including NAVs, and therefore funds would not have to change their valuation procedures. Rather, closed-end funds that do not calculate their NAVs on a monthly basis for any other purpose than Form N-PORT reporting will be able to continue relying on General Instruction G²¹⁴ to produce their NAVs. Therefore, we do not estimate the filing cost increase to be different for closed-end funds compared to other types of affected funds.

One commenter indicated that the shorter filing timeline would especially burden funds with complex investment strategies, such as alternative funds.²¹⁵

time cost of 5 hours. See Table 3 (and accompanying footnotes, which contain additional details about these estimates).

²¹² See ICE Comment Letter.

²¹³ See Neuberger Berman Comment Letter.

²¹⁴ See General Instruction G of Form N-PORT; Reporting Modernization Adopting Release, *supra* note 5, at n.460 and accompanying text (stating that, "based upon staff experience, it is [the Commission's] understanding that most closed-end funds strike their NAV on at-least a monthly basis," but that funds that do not do so may report information on Form N-PORT by using their internal methodologies consistent with how they report internally and to current and prospective investors under General Instruction G of Form N-PORT).

²¹⁵ See Fidelity Comment Letter.

Some commenters also highlighted that collecting Form N-PORT data may take substantial time for funds that engage in manual processes to obtain certain of this information, such as funds investing in certain fixed income securities or derivatives; and therefore, the data included in Form N-PORT reports may come from multiple sources.²¹⁶ One commenter stated that, as a result, it is not feasible to simply download the relevant data from the fund accounting agent's system for the purposes of populating Form N-PORT.²¹⁷ While we recognize that the amount of data currently required to be filed on each Form N-PORT is substantial, the amendments to Form N-PORT will not change the data items that need to be prepared and reviewed or change the effort it takes for certain funds to collect data included in Form N-PORT. In addition, while we recognize that funds with complex investment strategies or funds that currently use manual processes to obtain certain Form N-PORT information, as opposed to funds with less complex strategies and funds that are able to pull data in a completely automated manner, at present may generally experience higher costs associated with collecting such information, the current recordkeeping requirements call for the Form N-PORT information to be collected within 30 days after month end. Therefore, we do not expect that the accelerated filing deadline would change the current costs of collecting data for Form N-PORT, as suggested by the commenters. Rather, the amendments will align the deadline for filing information with the deadline by which funds are already required to record such information, thereby increasing the costs of filing-related activities, such as data tagging. Therefore, we do not estimate the filing cost increase to be different for these types of funds compared to other types of affected funds. However, to the extent that certain funds, such as those belonging to smaller fund groups that may not experience economies of scale, may need to prepare recordkeeping data more quickly than they currently do in order to provide additional time for filing-related activities, these funds may experience higher costs related to accelerating their processes around

²¹⁶ See, e.g., ICI Comment Letter I; T. Rowe Price Comment Letter.

²¹⁷ See T. Rowe Price Comment Letter. This commenter also stated it currently prepares and reviews approximately 1.4 to 2.0 million data points across the 197 funds for each monthly report within Form N-PORT.

preparation and transmission of the data for filing.

In addition, we recognize that funds' advisers could be working to meet other regulatory reporting obligations during the same period they will be working to prepare monthly Form N-PORT reports and that there may be overlap in teams that prepare, review, and file Form N-PORT reports with those that are involved with other required filings. Some commenters indicated that such overlap may hinder these teams.²¹⁸ Two commenters suggested that these strains would be pronounced for the months following the end of the reporting period that annual and semiannual reports are due.²¹⁹ While we acknowledge that fund groups may use the same staff and service providers in the filing processes for Form N-PORT and other forms, such as Forms N-MFP, N-CSR, N-CEN, 24F-2, and CPO-PQR, funds generally should already have enough operational separation in preparation of information required by each form due to the different nature of data items required by various forms and because funds are already required to gather and accurately record Form N-PORT information within 30 days of month end. However, we acknowledge that some funds may need to make operational changes and incur additional costs in order to timely meet all reporting obligations, such as increasing the use of service providers for reporting purposes or improving efficiency in the reporting process by updating internal systems to improve processes around preparing and transmission of N-PORT data for filing, for example, by reducing manual processes.²²⁰

Some commenters were concerned that the risk of reporting errors would go up if a fund is required to complete additional filing steps on the same 30-day deadline that is required for recordkeeping.²²¹ For example, one commenter stated that a 30-day deadline would provide insufficient time for resolving data issues prior to filing, even with increased resources.²²² Another commenter expressed that 30 days is not enough for data quality reviews.²²³ While we recognize that funds may

expend more resources to minimize errors in their Form N-PORT filings due to the accelerated filing deadline, which may lead to operational inefficiencies, we do not expect these costs to be significant relative to the baseline because funds are currently required to have accurate information within 30 days of month end for recordkeeping purposes.²²⁴ To the extent that additional processes associated with filing will be more condensed under the amendments, the risk of reporting errors (e.g., an error in XML tagging), relative to the current quarterly filing requirement may increase. However, if a fund identifies an error in its report after the filing deadline, it can file an amendment to correct the error, as currently permitted. The extended implementation period will provide the affected funds with time to adjust their Form N-PORT reporting processes in order to minimize errors.

Lastly, to the extent that nonpublic information the Commission will receive on Form N-PORT reports could be subject to a data breach, unauthorized access could harm shareholders by expanding the opportunities to exploit the information, as highlighted by some commenters.²²⁵ We recognize that the Commission, faces persistent and increasingly sophisticated malicious cyber-attacks that threaten the agency's technology systems and infrastructure that, if successful, could expose registrants' and other market participants' data. However, the Commission is continuously working to improve its efforts to identify, deter, protect against, detect, and respond to these threats and actors and it employs an array of actions to safeguard and protect the confidentiality and security of all information reported to EDGAR, which includes data reported on Form N-PORT.²²⁶

2. Form N-PORT Publication Frequency

The Commission is adopting the amendment which will make funds' reports on Form N-PORT public on a monthly basis 60 days after the end of each monthly reporting period. This data, which will be reported at a monthly rather than quarterly frequency, will benefit fund investors and other users of Form N-PORT reports by increasing transparency of funds' portfolios, thereby enhancing the ability of investors to review and

monitor information about their funds' portfolios (directly or through analyses performed by third-party data aggregators). Some commenters disagreed that a requirement of more frequent public disclosure would benefit investors.²²⁷ For example, one commenter expressed that, since its funds currently disclose portfolio holdings on a public website every month and disclosing portfolio holdings on a fund's website is a better tailored approach to ensuring appropriate information is made available to retail investors, their shareholders would not benefit from monthly publication of Form N-PORT data.²²⁸ We disagree with this assessment; more frequent public disclosure will benefit investors. Consistent information that is available for all funds is a public good.²²⁹ Each fund benefits to some extent from their own disclosure, but they do not internalize the full benefits, which are realized to the greatest extent when all funds disclose consistent and comparable information. For that reason, private market incentives, as currently exist, lead to under-provision of the information, compared to what would be useful for the fund investors. Below, we describe specific ways in which the information will be more comparable and useful.

First, while we continue to recognize that certain funds do currently provide monthly portfolio holdings on their websites or publish this information via a data aggregator, not all funds provide such disclosure.²³⁰ Moreover, voluntary disclosures that are currently available on funds' websites may not include other information that Form N-PORT reports include, such as market-wide information about funds' total and net assets, liabilities, returns, flows, as well as information to help assess a fund's risks, including for example interest rate risk, credit risk, and counterparty risk. In addition, voluntary disclosures of

²²⁷ See, e.g., ICE Comment Letter; Principal Comment Letter; ICI Comment Letter I.

²²⁸ See Principal Comment Letter.

²²⁹ "Public Good" is an economics term. It describes a good that is both non-excludable and non-rivalrous, meaning that its use cannot be limited to paying customers and that it can be simultaneously used by more than one consumer. See Paul A. Samuelson, *The Pure Theory of Public Expenditure*, 36 *The Review of Economics and Statistics* 387–389, (Nov. 1954).

²³⁰ For example, one recent paper looks at the coverage of the monthly portfolio data across three mutual fund databases for the period 2004–2019 and estimates that at year-end 2019, 56% of portfolio disclosures for US-based equity mutual funds reflect voluntary monthly portfolio disclosures. See James J. Li, Weili Ge & Lu Zheng, *The Economics of Voluntary Portfolio Disclosure* (Sept. 1, 2023), available at SSRN: <https://ssrn.com/abstract=557186> (retrieved from SSRN Elsevier database).

²¹⁸ See, e.g., Singer Comment Letter; T. Rowe Price Comment Letter; see also ICI Comment Letter I.

²¹⁹ See, e.g., PIMCO Comment Letter; Singer Comment Letter.

²²⁰ The costs associated with any such changes would be covered by our cost estimates above. See *supra* notes 210 and 211.

²²¹ See, e.g., ICI Comment Letter I; T. Rowe Price Comment Letter; BlackRock Comment Letter; Invesco Comment Letter.

²²² See T. Rowe Price Comment Letter.

²²³ See BlackRock Comment Letter.

²²⁴ See General Instruction A of Form N-PORT.

²²⁵ See, e.g., Dodge & Cox Comment Letter I; ICI Comment Letter I; Invesco Comment Letter; Principal Comment Letter.

²²⁶ See *supra* note 76 and accompanying text for additional discussion.

monthly portfolio holdings that are currently publicly available may be inconsistent across funds and over time and may vary in format, presentation, or ease of access.²³¹ As a result, gathering voluntarily disclosed data for the purposes of historical analysis of fund portfolios or comparisons of funds with similar portfolios could be burdensome. Although such analyses are more frequently performed by third parties, such as brokers, data analysts, and investment advisers, the results of these analyses ultimately benefit investors because investors or their financial professionals utilize them in investment allocation decisions. However, fund portfolio analyses are currently limited by the inconsistent availability of current and historical portfolio data across various databases that consolidate mandatory and voluntary fund portfolio disclosures,²³² which can negatively impact investors who rely on these analyses in their investment allocation decisions. Therefore, monthly Form N-PORT portfolio disclosure will benefit the public by increasing availability of portfolio data for those funds that do not currently provide monthly disclosures on a voluntary basis and by improving consistency of disclosures, as well as decreasing the costs of accessing and aggregating these disclosures in a uniform structured format for those funds that already provide voluntary monthly disclosures. As a result, users of Form N-PORT data who wish to aggregate or compare historical fund portfolios will be able to do so more efficiently and at a lower cost, which will ultimately benefit investors.

Second, because currently different funds can adhere to different fiscal years, and the portfolio information is required to be publicly disclosed only for the third month in the fiscal-year quarter, investors and other Form N-PORT users cannot access same-month portfolio data for similar funds that use different fiscal years. For example, if Fund A has a fiscal year end in December (27.9% of affected funds) and Fund B has a fiscal year end in October (18.4% of affected funds), investors and other Form N-PORT users can see Fund A's portfolio data only for March, June, September, and December; and are able

to see Fund B's portfolio data only for January, April, July, and October.²³³ However, market events can occur in any month; and, therefore, investors in funds (and data analysts and financial professionals assisting them) whose third month of a fiscal-year quarter does not align with the month during which a market event occurs do not currently have access to that month's portfolio data, making it impossible to compare portfolio trends of funds with similar strategies during stress events. For example, investors in funds with a fiscal year end in October are not able to access Form N-PORT portfolio data for March 2020, which covers a period of significant market stress. Therefore, monthly publication of portfolio information will help ensure that investors and other Form N-PORT users have access to consistent historical portfolio information for all the affected funds, which will help with historical analysis of fund portfolios and comparisons of funds with similar portfolios, ultimately benefitting investors by helping them make more informed investment allocation decisions.

Third, monthly portfolio disclosure may benefit investors by decreasing agency problems that may exist in the registered fund sector. For example, because fund managers might vary the risk of a fund portfolio in hope of achieving higher portfolio returns ("risk shifting") to attract investors, which may result in temporary departure from the fund's investment strategy, the presence of information asymmetry (*i.e.*, investors and other users of Form N-PORT not having access to portfolio holdings information on a frequent basis), may further incentivize this risk shifting behavior. As another example, information asymmetry may contribute to managers engaging in return smoothing to depict fund portfolios as less risky (*i.e.*, having lower volatility). Thus, to the degree that these tactics are present in the mutual fund sector, a reduction of information asymmetry resulting from more frequent public portfolio holdings disclosure would reduce the incentives for risk shifting and return smoothing behavior of fund managers, benefitting fund investors. For example, a recent working paper analyzes the 2016 adoption of Form N-PORT reporting requirements and suggests that standardized portfolio disclosures decreased information asymmetry between fund investors and managers, showing that, as a result of the 2016 reporting requirements, fixed-income fund managers (who generally

have incentives to display lower volatility) became less likely to engage in return smoothing, and equity managers became less likely to engage in risk shifting.²³⁴ However, some academic studies of the earlier 2004 regulatory change from mandatory semiannual to quarterly reporting of mutual fund holdings suggest that the 2004 regulatory change did not result in a reduction of portfolio pumping, window dressing, and style drift.²³⁵ Although these studies do not find a decrease in such tactics as a result of more frequent disclosure mandated in 2004, the studies do suggest that higher reporting frequency improves investors' ability to sort among good and bad fund managers because these tactics could be associated with higher trading costs, and, consequently, lower fund performance.²³⁶ This, in turn, allows investors to make better investment allocation decisions.

The increased publication frequency may increase certain costs for some funds.²³⁷ In particular, because the final amendments will reduce the maximum potential time that a fund currently can use to build a position in a security without publicly disclosing the

²³⁴ See Ki-Soon Choi, *The Role of Portfolio Disclosures in Mutual Funds* (working paper revised Aug. 2 2023), available at SSRN: <https://ssrn.com/abstract=4283140> (retrieved from SSRN Elsevier database). The paper identifies equity and fixed-income funds with the size between \$30 million and \$10 billion that have at least one Form N-Q and one Form N-PORT during the period between 2017 and 2021, using CRSP Mutual Fund Database.

²³⁵ See, *e.g.*, Xiangang Xin, P. Eric Yeung & Zilong Zhang, *Wrong Kind of Transparency? Mutual Funds' Higher Reporting Frequency, Window Dressing, and Performance*, 62 J. Acct. Rsch. 737–81 (2024). This study looks at the effects of 2004 regulation and the results suggest that the 2004 change from semiannual to quarterly portfolio reporting exacerbated signal manipulations, such as window dressing, by fund managers. The study suggests that, because elevated window dressing under higher reporting frequency is associated with an increase in trading costs and lower fund performance, investors can identify low-skill managers more quickly and penalize them in the form of withdrawals. See, *e.g.*, also Ji-Woong Chung, Koren M. Jo, Sejin Kang & Jaouk Kim, *Intended Consequences of More Frequent Portfolio Disclosure* (Mar. 2, 2024), available at SSRN: <https://ssrn.com/abstract=4086186> (retrieved from SSRN Elsevier database). The authors study the impact of the 2004 regulation, which mandated mutual funds to increase their portfolio disclosure frequency from semiannual to quarterly, on actively managed U.S. domestic equity funds. The results show an improvement in capital allocation efficiency, as measured by the return predictability of money flows, due in large part to institutional investors' ability to avoid underperforming funds. The results also suggest that investors of mutual funds in the treated group become better able to predict future fund performance compared to those in the control group, implying that the new regulation provided investors with incrementally valuable information.

²³⁶ See *id.*

²³⁷ See also Proposing Release, at section III.C.4.b.

²³¹ For example, if a portfolio is presented in a PDF format, one would need special software to convert such data from text to structured data, which may be costly.

²³² For example, one academic paper estimates that about 58% of newly founded U.S. equity mutual fund share classes in the CRSP mutual fund database from 2008 to 2015 cannot be matched to the Thomson Reuters mutual fund holdings database. See Qifei Zhu, *The Missing New Funds*, 66 Mgmt. Sci. 1193–1204 (2020).

²³³ See Table 2.

acquisition of the initial stake in this security from approximately five months to approximately three months²³⁸ for those securities that do not qualify to be reported as a miscellaneous securities, the risks related to copycatting or free-riding by other market participants may increase.²³⁹ For example, under the

²³⁸ For example, under the baseline, if a fund starts building a position in a security in the beginning of its fiscal quarter, it may spread the purchases of this security over approximately five months before the quarter-end position will be reflected in the public disclosure 60 days after the quarter-end. This means that a fund can finish building this position in five months without other investors seeing the fund's initial allocation towards the security. In contrast, under the final amendments, the time a fund would have to build a position without publicly disclosing it would shorten to approximately three months—because the position at the end of the first month would become publicly disclosed 60 days after the month end, unless it qualified to be reported as a miscellaneous security.

²³⁹ As discussed in more detail below, some commenters expressed concern about more frequent public disclosure resulting in front-running or copycatting of fund strategies. Academic literature suggests that funds, including mutual funds, may be subject to free-riding or copycatting. While the existing literature on the effects of free-riding/copycatting on performance is primarily focused on funds other than mutual funds, there is a limited number of studies of copycatting behavior in the context of mutual funds and their portfolio disclosures. See, e.g., Roberto Stein, *'Smart' copycat mutual funds: on the performance of partial imitation strategies*, 8 Financial Innovation 92 (2022). This paper looks at actively managed, open-end mutual funds that invest primarily in domestic equities during the period between 2000 and 2006 and construct a "copycat score" for each fund. The author suggests that mandated portfolio disclosures are being actively exploited by some traders, and that both funds that copycat and funds that are being copycatted consistently outperform other funds, which implies that a trading strategy that follows publicly reported holdings of actively managed funds can earn similar returns. See also, e.g., Blake Phillips, Kuntara Pukthuanthong, and P. Raghavendra Rau, *Detecting Superior Mutual Fund Managers: Evidence from Copycats* 86–321 (Dec. 22, 2014), available at SSRN https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2496452. The paper studies the sample of actively managed, domestic mutual funds that report monthly frequency returns and net assets during the period between 1991 and 2013. Importantly, this study defines copycat funds as those that replicate the entire portfolio of another fund, rather than holdings of individual securities. The authors conclude that although copied funds are harmed by copycatting behavior in terms of deflected flows, the magnitude of this harm remained relatively constant across regulatory regimes (i.e., before and after the 2004 change in the reporting requirements). However, both studies do not seem to differentiate copycatting activities from coincidental trades. Another recent paper uses Form 13F data for both mutual funds and other funds (primarily hedge funds) between 2003 and 2017 and corrects for this issue. The authors find that copycat companies are able to identify profitable trades that outperform other trades disclosed by the copycatted companies by 5.5% annually. However, because this study comingles mutual funds and other funds, it is unclear whether results apply to the affected funds. See Cao, Sean Shun, et al., *Copycat skills and disclosure costs: Evidence from peer companies' digital footprints*, Journal of Accounting Research 59.4 (2021): 1261–

final amendments, assuming it takes a fund more than three months to build a position in a security, its acquisition cost may increase 60 days after the one-month mark (which would be up to two months sooner compared to the baseline) because other market participants would be able to see that the fund acquired a new security and may copy the trade. Such copycat trades could inflate the price of the security, thereby increasing the trading costs of further purchases of this security for the fund, which will be passed onto the fund's investors in the form of lower cost-adjusted fund returns.²⁴⁰

Some commenters urged that concerns about copycatting should not impede more rapid public disclosure.²⁴¹ We agree with these commenters because we expect that the above effects would be limited to a small universe of funds: for example, active funds that build substantial positions in multiple securities over a longer than 2-to-3-months timeframe in order to avoid market impact from their trades, and for which the 5% limit on miscellaneous securities may be binding. In particular, with the 60-day delay, even if an actively managed fund began to build a position on the last day of the month, that position would not be publicly disclosed on Form N–PORT until approximately two months later. The fund could use those two months to continue to build its position without public knowledge of the fund's position.²⁴²

As an initial matter, when a fund is building a new position in an instrument, it can choose to treat that instrument as a miscellaneous security for up to one year, which would remain nonpublic for that period, to the extent that this instrument has not been previously been made public by name and to the extent that the addition of this instrument would stay within the 5% limit on aggregate positions in

miscellaneous securities.²⁴³ Therefore, the ability to keep certain new investments confidential for a longer period mitigates concerns about copycatting or free-riding for the majority of funds.

In addition, the 60-day delay in public disclosure also mitigates the concerns about an increase in copycatting risk for actively managed funds, relative to the copycatting risk due to the current public disclosure requirements, because the information relied on to identify undervalued securities to build new positions can become known to the market or otherwise incorporated into the security's price over the course of the 60-day delay. Traders attempting to copycat trades of actively managed funds on a 2-to-3 months delay will therefore have limited opportunity to enter into positions at advantageous prices, which may reduce incentives to copy the trades of an actively managed fund in the first place. In fact, such copycatting activity on a 2-to-3 months delay may also facilitate price discovery to the benefit of the disclosing fund and its investors. While a fund would benefit the most from any price increase in the underlying security when copycat trades occur after the fund has finished building its entire position in this security, any early disclosure of the fund's position that leads to copycatting may result in price appreciation affecting the part of the position already built sooner than would otherwise be the case. While there will still be costs in the cases where funds cannot fully establish their positions before the required disclosures become public, those costs will be mitigated by price appreciation affecting the part of the position already built prior to the disclosures.

Nonetheless, we recognize an increase in risk for a small universe of funds. For example, one commenter²⁴⁴ stated that hedge funds and algorithmic traders seek to capitalize on proprietary trading decisions of fund managers by looking for information about the trading activity of large funds²⁴⁵ and that this commenter does not disclose portfolio holdings for any of its funds more frequently than required in order to protect its funds' intellectual property

²⁴³ See section II.A.2 for additional discussion; see also section IV.B.1.

²⁴⁴ See Dodge & Cox Comment Letter I; Dodge & Cox Comment Letter II.

²⁴⁵ Other commenters generally expressed that other market participants could use automated tools to reverse-engineer portfolio decisions, harming funds and their shareholders. See, e.g., ICI Comment Letter I; JP Morgan Comment Letter; PGIM Comment Letter; Principal Comment Letter.

1302. Another recent study also examines the costs of Form 13F disclosure, focusing on hedge funds and pension funds, and finds that additional disclosure may harm portfolio returns over time. The study suggests that long-term stock investors are being harmed on a risk-adjusted return basis, because copycats cause long-term stock investors to experience excess volatility in their returns without higher returns. See David Kwon, *The Differential Effects of the 13f Disclosure Rule on Institutional Investors* (working paper, May 5, 2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4095482 (retrieved from SSRN Elsevier database). Also see Reporting Modernization Adopting Release, *supra* note 5, at section III.B.3 for review of less recent academic literature.

²⁴⁰ See id.

²⁴¹ Hof zum Ahaus Comment Letter; Myers Comment Letter.

²⁴² The same would be true for a fund exiting an existing position.

for the benefit of investors.²⁴⁶ Although some funds build positions over time to reduce market impact of their trades, such trading behavior in combination with quarter-end disclosure and varying fiscal year starts may be strategic rather than preventative (against market impact), which may negatively impact fund investors because trades are not necessarily made at the time when new information about the fundamental value of a security is learned by a fund manager. For example, one commenter stated that it tries to time purchases of new investments to avoid being active in the market at the time it makes public disclosures.²⁴⁷ Consistent with the commenter's description, a recent academic paper suggests that funds may engage in managing their position building around required disclosure dates, which may lead to non-trivial positive or negative effects on fund portfolio informativeness and informativeness of prices.²⁴⁸ To the extent that this behavior is present among some fund managers, requiring monthly disclosure may mitigate these effects, benefitting investors.

3. Amendments to Form N-CEN

We are also adopting amendments to Form N-CEN to identify and provide certain identifying information about service providers a fund uses to fulfill the requirements of rule 22e-4.²⁴⁹ This information will help the Commission oversee funds' liquidity risk management practices, as well as provide additional transparency about

service providers to investors and other data users. Funds should already maintain the information they will be required to report under this amendment in the ordinary course of their business. Therefore, we do not expect that funds will experience substantial cost increases as a result of this amendment. In particular, we estimate that the changes to Form N-CEN will result in costs of around \$420 per filer per year.²⁵⁰

4. Entity Identifiers

The Commission is amending as proposed the definition of LEI in Forms N-PORT and N-CEN to remove language providing that, in the case of a financial institution that does not have an assigned LEI, a fund should instead disclose the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any. Instead of classifying an RSSD ID as an LEI for these purposes, the amendments will require funds to identify specifically whether they are reporting an LEI or an RSSD ID.²⁵¹ The amendments will not change the circumstances in which a fund is required to report an LEI or an RSSD ID, if available. Rather, these amendments will help the Commission and market participants identify entities related to funds' counterparties and issuers of funds' holdings more efficiently. We do not expect that the amendments to separate the concepts of LEI and RSSD ID more clearly in the form will change the burdens of the current form, as the form already requires a fund to report the RSSD ID, if any, if a financial institution does not have an assigned LEI.

5. Other Compliance Costs

Some commenters stated that the Commission should consider the cumulative costs of implementing the proposed amendments and other recent Commission rules and proposed rules.²⁵² The Commission has considered interactions between the economic effects of the proposal and other recent Commission proposals that culminated in the Names Rule Adopting

Release,²⁵³ the Settlement Cycle Adopting Release,²⁵⁴ the Tailored Shareholder Reports Adopting Release,²⁵⁵ and the Customer Notification Adopting Release.

Consistent with its long-standing practice, the Commission's economic analysis in each adopting release considers the incremental benefits and costs for the specific rule—that is, the benefits and costs stemming from that rule compared to the baseline. The Commission acknowledges the possibility that complying with more than one rule in the same time period may entail costs that could exceed the costs if the rules were to be complied with separately. One of the rules has a compliance date that occurred before the effective date of the final amendments,²⁵⁶ such that there is no overlap in transition periods. The other rules overlap in part with the final amendments, but the compliance dates adopted by the Commission are spread out over an approximately two-year period from 2024 to 2026, which could limit the number of implementation activities occurring simultaneously.²⁵⁷ The Commission has tiered compliance dates to provide necessary time for large and small entities to comply with these final amendments and other recently adopted rules with compliance dates in close proximity.²⁵⁸ Where overlap in compliance periods exists, the Commission acknowledges that there may be additional costs on those entities that are subject to one or more other rules.

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

As noted above, some commenters generally disagreed that a requirement of monthly public disclosure would benefit investors.²⁵⁹ We disagree with

²⁴⁶ See Dodge & Cox Comment Letter I. The same commenter also stated that, since 2007, the prices of new holdings in one of its funds have, on average, increased approximately twice as much as the average increase in S&P 500 constituents on the day of the fund's quarterly portfolio disclosures. See Dodge & Cox Comment Letter II.

²⁴⁷ See Dodge & Cox Comment Letter II.

²⁴⁸ See T.A. Gormley, Z. Kaplan & A. Verma, *More Informative Disclosures, Less Informative Prices? Portfolio and Price Formation Around Quarter-Ends*, 146 J. Fin. Econ. 665–88 (Nov. 2022). The paper analyzes trade-level data of certain funds during 1998–2008 and reports trading patterns around required SEC disclosure dates. The paper documents that funds execute different types of trades around quarter-end dates, which is when most funds record positions for subsequent disclosures. The findings suggest that funds shift the timing of planned trades in response to upcoming disclosures. In particular, funds are more likely to start new trading campaigns after the quarter-end and more likely to complete existing trading campaigns before the quarter-end. The results suggest that although funds trade into positions which tend to make portfolio disclosures more informative about future holdings, these trades may simultaneously decrease price informativeness for underlying securities because trading in these securities around disclosure dates may not necessarily be driven by changes in their intrinsic values.

²⁴⁹ We did not receive any comments about costs and benefits of this amendment.

²⁵⁰ The estimate is based on the following calculations: blended hourly rate for a compliance attorney and a senior programmer at \$420 for 1 hour = \$420. The 1-hour estimate reflects an initial time cost of 1.5 hours, annualized over a 3-year period, with an estimated ongoing annual time cost of 0.5 hours. See Table 4 (and accompanying footnotes, which contain additional details about these estimates).

²⁵¹ We did not receive any comments about costs and benefits of this amendment.

²⁵² See *supra* section IV.B.

²⁵³ See ICI Comment Letter I; PIMCO Comment Letter.

²⁵⁴ See BlackRock Comment Letter.

²⁵⁵ See ICI Comment Letter I.

²⁵⁶ The compliance date for the Settlement Cycle Adopting Release was May 28, 2024.

²⁵⁷ See *supra* section IV.B (listing recent rule adoptions and their respective compliance dates). The compliance date for the Names Rule Adopting Release is Dec. 11, 2025, for larger entities and June 11, 2026, for smaller entities. For the Tailored Shareholder Reports Adopting Release, funds will be required to transmit tailored shareholder reports following the compliance date of July 24, 2024, but the timing for funds' transmittals of these reports will depend on each fund's fiscal calendar. The compliance date for the Customer Notification Adopting Release is Dec. 3, 2025, for larger entities and June 3, 2026, for smaller entities.

²⁵⁸ See *supra* section II.E.

²⁵⁹ See section IV.C.2; see also, e.g., ICE Comment Letter; Principal Comment Letter; ICI Comment Letter I.

this assessment and believe that monthly public disclosure may improve allocative efficiency of portfolio allocation. We also expect that the amendments will improve price efficiency of certain securities held by affected funds and price efficiency of secondary-market shares of closed-end funds.

In particular, as discussed in section IV.C.2, investors are currently not able to obtain consistent monthly portfolio data for all funds from other sources, such as funds' websites or third-party data aggregators. More frequent public disclosure of funds' portfolios will increase transparency about funds' portfolio trends and enhance the ability of investors (and data analysts and financial professionals assisting them) to monitor funds' portfolios, which will reduce information asymmetries between funds and investors. This, in turn, may increase allocative efficiency allowing investors to make more informed investment decisions in selecting funds that align with their investment objectives and risk tolerance.²⁶⁰

Further, monthly public Form N-PORT disclosure may also improve price efficiency for fund holdings.²⁶¹ Price efficiency is expected to improve both because Form N-PORT information will contain valuations (which may be useful for holdings that are not traded on an exchange),²⁶² but also because the information that a fund is holding a particular security may affect the valuation decisions of investors.²⁶³ While monthly portfolio information will increase the number of data points available to the public, resulting in an improvement of market

participants' understanding of fund holdings and, therefore, price efficiency relative to the baseline, efficiency improvements will still be limited by the fact that portfolio information is lagged by 60 days.

The amendments may also increase efficiency in the secondary market for shares of closed-end funds. Because portfolios of closed-end funds will become more transparent, to the extent that portfolio information lagged by 60 days is informative for prices of secondary market transactions in shares of closed-end funds, the dispersion between funds' NAVs and the value of their shares in the secondary market may narrow, increasing the price efficiency of closed-end fund shares traded in the secondary market.

2. Competition

The amendments will entail compliance costs, though these are not expected to be substantial because funds already gather Form N-PORT information at a monthly frequency.²⁶⁴ Any compliance costs a fund pays, including compliance costs from the final amendments, are borne by the fund's investors. Because compliance costs have a fixed component (*i.e.*, they do not scale perfectly with fund size), smaller funds or smaller fund complexes will have greater compliance costs as a percentage of assets under management, negatively affecting their ability to compete with larger funds. Similarly, competition between funds and other means of investing, such as collective investment trusts ("CITs")²⁶⁵ or separately managed account programs, may also be affected, in that funds may incur increased costs which could lead to outflows to these other vehicles, to the extent fund expenses are a dispositive factor in a choice of an investment vehicle for some investors.²⁶⁶ This effect is mitigated by the increased transparency that funds would offer. Overall, the amendments

are likely to improve competition between funds by improving fund transparency and allowing investors to better understand the reasons for fund performance.

Some commenters requested the Commission consider interactions between the economic effects of the proposed rule and other recent Commission rules, as well as practical realities such as implementation timelines.²⁶⁷ We have also considered the potential effects on entities that are implementing other recently adopted rules during the compliance period for these amendments.²⁶⁸ As discussed above, the Commission acknowledges that overlapping compliance periods may in some cases increase costs. This may be particularly true for smaller entities with more limited compliance resources. This effect can negatively impact competition because these entities may be less able to absorb or pass on these additional costs, making it more difficult for them to remain in business or compete. However, we have mitigated the potential for heightened costs by adopting a tiered transition period. Moreover, the other rules have long compliance periods to facilitate planning, preparation and investment, thereby mitigating the cost of overlapping compliance periods, which may be particularly useful for smaller entities. We therefore do not expect the risk of negative competitive effects from increased compliance costs from overlapping compliance periods to be significant.

3. Capital Formation

This rule is likely to promote capital formation by improving price efficiency. In particular, more information on fund holdings (monthly versus quarterly), and more timely information, will improve investors' ability to value securities. These pricing signals from the market will lead to better decisions by issuers on how to allocate capital, namely to its most efficient uses. This effect is limited to the extent that investors already have access to data from Form N-PORT, and to the extent that there are numerous pricing signals available to investors in the market beyond those in Form N-PORT data. Nonetheless, the observation that there is a price response to publication of N-PORT data²⁶⁹ suggests that there is valuable information in these filings that will improve the valuation of

²⁶⁰ See, e.g., Ji-Woong Chung, Koren M. Jo, Sejin Kang & Jaouuk Kim, *Intended Consequences of More Frequent Portfolio Disclosure* (Mar. 2, 2024), available at SSRN: <https://ssrn.com/abstract=4086186> (retrieved from SSRN Elsevier database). The authors study the impact of the 2004 regulation, which mandated mutual funds to increase their portfolio disclosure frequency from semi-annual to quarterly, on actively managed U.S. domestic equity funds. The results show an improvement in capital allocation efficiency, as measured by the return predictability of money flows, due in large part to institutional investors' ability to avoid underperforming funds.

²⁶¹ Price efficiency refers to the idea that a security's price reflects all available information about the actual value of the security available to all market participants (issuers, investors, analysts, etc.).

²⁶² See, e.g., Morningstar, *Bond Pricing: Agreeing to Disagree* (2021), available at https://www.morningstar.com/content/dam/marketing/shared/research/foundational/Bond_Pricing_2021.pdf. The study shows that funds can value the same security differently at the same time.

²⁶³ This is consistent with one commenter's statements that prices of new portfolio positions react upon disclosure of these positions on Form N-PORT. See *supra* note 246.

²⁶⁴ See discussion in section IV.C.1.

²⁶⁵ CITs are an alternative to mutual funds for defined contribution plans. Like mutual funds, CITs pool the assets of investors and invest those assets according to a particular strategy. Unlike mutual funds, which are regulated under the Investment Company Act, CITs are regulated under banking laws and are not marketed as widely as mutual funds. These differences reduce CITs' operational and compliance costs compared with mutual funds. According to one report, CITs made up 47% of target-date strategy assets, as of the end of 2022, and are projected to become the most popular target-date vehicle within the next two years. See Natalya Shnitser, *Overtaking Mutual Funds: The Hidden Rise and Risk of Collective Investment Trusts* (Boston College Law School Legal Studies Research Paper No. 612, Sept. 17, 2023), available at <https://ssrn.com/abstract=4573199> (Yale Law Journal, Forthcoming).

²⁶⁶ *Id.*

²⁶⁷ See *supra* section IV.B; see ICI Comment Letter I; PIMCO Comment Letter; BlackRock Comment Letter.

²⁶⁸ See *supra* sections IV.B and IV.C.5.

²⁶⁹ See *supra* note 263 and accompanying text.

securities and thereby promote capital formation.

E. Alternatives

1. Form N–PORT Filing Frequency

The Commission is adopting the amendment to require funds to file Form N–PORT reports with the Commission within 30 days after the end of each month. As an alternative, we considered a longer filing deadline (e.g., 45 or 60 days after each month end), as was suggested by some commenters.²⁷⁰ We recognize that a 30-day filing deadline will impose costs on funds and their shareholders and that a longer filing deadline may mitigate such costs and could also reduce the risks associated with data security risks because the confidential portfolio data maintained on EDGAR would be less sensitive, to the extent that such risks are significant. However, as discussed above, because funds are currently required to maintain in their records monthly information that is required to be reported on Form N–PORT within 30 days after the end of each month, we do not expect that these costs will be substantial, while the 30-day deadline will provide the Commission with more timely information about funds' portfolio holdings and enhance its ability to oversee such funds, ultimately benefitting investors. In particular, any delays in receipt of information can affect the Commission and the staff's ability to use Form N–PORT information to carry out the Commission's regulatory function for the asset management industry, especially during periods of stress in which analysis of potential issues and development of any regulatory responses are particularly time sensitive endeavors. Thus, the benefits of the information decline as the filing deadline extends.

As another alternative, we could have adopted a shorter filing deadline, such as one week or fifteen days after the end of each month, to reduce the delay of the data, as suggested by some commenters.²⁷¹ Under this alternative, the Commission would receive data on a timelier basis and would be able to respond to market events more effectively. However, a shorter filing timeframe would require funds to collect information more quickly than they currently do, which would result

in additional costs and could also present greater data security risks because the confidential portfolio data maintained on EDGAR would be more sensitive.

2. Form N–PORT Publication Frequency

The Commission is adopting the amendment which will make funds' reports on Form N–PORT public on a monthly basis 60 days after the end of each monthly reporting period. As an alternative, we considered requiring the Form N–PORT filings to become public with a shorter than 60-day delay. For example, we could match the publication date with the Commission filing deadline that we are adopting, which would mean that a fund's filing would be due and become public 30 days after the end of the reporting period. Making filings public immediately upon filing could improve investor understanding of fund portfolios because investors would be able to review the information closer to real time (though still with a substantial delay). This alternative could enhance the ability of investors to use more timely information when making investment allocation decisions and to choose the right fund that suits their portfolio construction goals.²⁷² This approach would also reduce the amount of information the Commission would be required to keep confidential.²⁷³ On the other hand, to the extent funds are at risk of predatory trading or copycatting when their portfolios become public sooner, this approach would increase those risks.²⁷⁴

We also considered providing a longer period between the time information is filed and when it is made public. The benefits and costs of these alternatives would be the reverse of the publication-upon-filing alternative. Namely, this alternative could reduce the risks of predatory trading or copycatting because by the time the information became public, it would be staler. On the other hand, it would also be less useful to investors seeking to understand their funds and, if we paired a delay in publication with a delay in the deadline for filing with the

Commission, it would be less useful to the Commission as well.

3. Other Alternatives

Part F of Form N–PORT requires a fund to attach a complete schedule of portfolio holdings for the end of the first and third quarters of the fund's fiscal year, presented in accordance with Regulation S–X, within 60 days after the end of the reporting period. As an alternative, we considered requiring funds to post Regulation S–X compliant portfolio information on their websites on a monthly basis. This alternative could make the monthly disclosure more usable, particularly for individual investors, to the extent that they are less likely to use the information in Form N–PORT because of its structured data format. However, in response to the Proposing Release, some commenters argued that investor demand for more frequent Regulation S–X compliant portfolio holdings information is small and that investors do not express preference for Regulation S–X disclosures over Form N–PORT portfolio disclosures.²⁷⁵

In addition, this alternative may involve significant costs and increase operational inefficiencies for funds, which could be passed on to investors, as raised by commenters.²⁷⁶ For example, because funds use portfolio positions as of the previous day (T+1 accounting) for their Form N–PORT portfolio disclosures but Regulation S–X requires accounting records to be presented in a trade-date format, funds would have to create two different portfolio disclosures on a monthly basis, which may be operationally inefficient.²⁷⁷

V. Paperwork Reduction Act

A. Introduction

Certain provisions of the final amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").²⁷⁸ The Commission published a request for comment on changes to these collection of information requirements in the Proposing Release and submitted these requirements to the Office of

²⁷⁰ See, e.g., Dodge & Cox Comment Letter I (suggesting 60 days); ICI Comment Letter I (suggesting 45 days); Invesco Comment Letter (suggesting 45 days).

²⁷¹ See, e.g., Hof zum Ahaus Comment Letter (suggesting weekly filing deadline with instant publishing); Myers Comment Letter (suggesting a 15-day reporting period if not weekly).

²⁷² Some commenters generally suggested that the information would be stale and less useful to investors if delayed by 60 days. See, e.g., Hof zum Ahaus Comment Letter (suggesting a one-week delay between the end of the month and publication of that month's Form N–PORT report); Brandano Comment Letter (suggesting a five-day delay); Gershon Comment Letter; Myers Comment Letter (suggesting a lag time before a report is available to the public of either 15 days or a week).

²⁷³ Certain data would remain confidential, such as the composition of the fund's "miscellaneous securities." See *supra* section IV.B.1.

²⁷⁴ See *supra* section IV.C.2.

²⁷⁵ See, e.g., ICI Comment Letter I; Principal Comment Letter (stating that only a small percentage of its website visitors review the existing Regulation S–X compliant schedules of investments); T. Rowe Comment Letter (stating that its funds' shareholders have not expressed a preference for Regulation S–X compliant schedules).

²⁷⁶ See section II.A.3 for a detailed discussion of commenter feedback on this alternative.

²⁷⁷ See, e.g., Capital Group Comment Letter; ICI Comment Letter I; SIFMA AMG Comment Letter.

²⁷⁸ 44 U.S.C. 3501 through 3521.

Management and Budget (“OMB”) for review in accordance with the PRA.²⁷⁹ The titles for the existing collections of information we are amending are: (1) “Rule 30b1–9 and Form N–PORT” (OMB control number 3235–0730); and (2) “Form N–CEN” (OMB control number 3235–0729). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We discuss below the collection of information burdens associated with the final amendments.

B. Form N–PORT

Form N–PORT requires registered management investment companies (except for money market funds and small business investment companies) and ETFs that are organized as unit investment trusts to report portfolio holdings information in a structured, XML data language. The form is filed electronically using the Commission’s electronic filing system, EDGAR. We are adopting the following amendments to Form N–PORT:

- *Filing frequency.* The final amendments to Form N–PORT will require filing Form N–PORT reports on a monthly basis, within 30 days after the end of each month. Currently, a fund must maintain in its records the information that is required to be included on Form N–PORT not later than 30 days after the end of each month, but is only required to file that information within 60 days after the end of every third month.

- *Other amendments.* We are adopting conforming amendments to certain existing items, including amendments related to certain entity identifiers and amendments regarding miscellaneous holdings disclosure to account for the adopted amendments making monthly Form N–PORT information available to the public.

In a change from the proposal, we are not adopting the following proposed amendments to Form N–PORT at this time:

- *Public reporting of aggregate liquidity classifications.* The proposed amendments would have required certain open-end funds to aggregate information they report about liquidity classifications of their investments, make certain derivatives- and liabilities-related adjustments, and report the adjusted aggregate information as well as information about the adjustments that were made. The proposed amendments to Form N–PORT also would have included certain changes to

conform to the proposed amendments to the liquidity rule in that release (e.g., changes to the liquidity categories).

- *Swing pricing information.* The proposed amendments would have required funds to report certain swing pricing information related to the size and frequency of price adjustments a fund made during each reporting period.

- *Additional reporting of Regulation S–X compliant portfolio information.* The proposed amendments would have increased the filing frequency of Regulation S–X compliant portfolio information on Part F of Form N–PORT.

The respondents to these collections of information will be management investment companies (other than money market funds and small business investment companies) and ETFs that are organized as unit investment trusts. We estimate that there are 12,561 such funds required to file on Form N–PORT.²⁸⁰ The final collections of information are mandatory for the identified types of funds. Certain information reported on the form is currently kept confidential, and this will continue to be the case under the final amendments.²⁸¹ All other responses to Form N–PORT reporting requirements will not be kept confidential, and instead will be made public 60 days after the end of the month to which they relate. Currently, only the report for every third month is made public. The final amendments are designed to assist the Commission in its regulatory, disclosure review, inspection, and policymaking roles, and to help investors and other market participants better assess different funds.

In our most recent PRA submission for Form N–PORT, we estimated the annual aggregate compliance burden to comply with the current collection of information requirements in Form N–PORT is 1,929,237 burden hours with an internal cost burden of \$690,927,892 and an external cost burden estimate of \$136,290,893.²⁸² We estimate that funds prepare and file their reports on Form N–PORT either by (1) licensing a software solution and preparing and filing the reports in house, or (2)

retaining a service provider to provide data aggregation, validation, and/or filing services as part of the preparation and filing of reports on behalf of the fund. We estimate that 35% of funds subject to the Form N–PORT filing requirements will license a software solution and file reports on Form N–PORT in house, and the remaining 65% will retain a service provider to file reports on behalf of the fund.

The Commission received one comment suggesting that the PRA estimates for the proposed amendments, including those unrelated to the proposed reporting requirements, were too low.²⁸³ The Commission also received comments not specifically addressing the estimated PRA burdens, but stating that the costs associated with implementing the proposed amendments to Form N–PORT would be significant. Some of these commenters suggested that funds will experience increased costs related to the collection of Form N–PORT information due to the increased frequency of filing, especially when combined with the proposals to increase the frequency of reporting Regulation S–X compliant portfolio holdings and to require aggregate liquidity and swing pricing reporting.²⁸⁴ However, the final amendments reduce many of the burdens raised by commenters (as compared to the proposal) because we are not adopting increased frequency of Regulation S–X compliant portfolio holding reporting and swing pricing and aggregate liquidity classification reporting. One commenter stated that some of its members estimated that filing Form N–

²⁸³ See Comment Letter of Calamos Investments LLC (Feb. 14, 2023) (“Calamos Comment Letter”) (stating that the proposal significantly underestimated the time and costs involved in implementing the proposed amendments, and providing an example related to the proposed swing pricing requirement, which we are not adopting). This commenter did not expressly state that the proposal underestimated the time and costs involved in implementing the proposed reporting requirements that we are adopting, but the commenter did separately state that the shorter time frame for filing and the requirement to make additional filings would increase costs to fund shareholders.

²⁸⁴ See, e.g., ICI Comment Letter I (stating that funds aggregate Form N–PORT information within 30 days for internal collection purposes, but funds would need to take additional steps to validate and tag the data for filing on that same time frame and indicating that funds also would be required to report aggregate liquidity bucketing and swing pricing-related information and provide a Regulation S–X compliant schedule of investments each month.); Brighthouse Comment Letter (stating that a monthly reporting regime as well as the proposal to increase the frequency of reporting Regulation S–X compliant portfolio holdings would dramatically increase the costs associated with the preparation, review, and filing of the form due to new human resources requirements, vendors, systems, processes, and procedures).

²⁸⁰ This estimate of the number of funds required to file on Form N–PORT is as of Dec. 31, 2023, and based on data from filings with the Commission.

²⁸¹ See General Instruction F of Form N–PORT; General Instruction F of amended Form N–PORT.

²⁸² The most recent Form N–PORT PRA submission was approved in 2023 (OMB Control No. 3235–0730). The estimates in the Proposing Release were based on earlier approved estimates (1,848,326 hours and \$108,457,536 external cost burden), and these earlier approved estimates are reflected in the “Proposed Estimates” section of the below table.

PORT monthly would increase costs by \$5,000 per fund per year.²⁸⁵ Another commenter estimated internal staffing costs of \$900,000 per year for the accelerated filing requirements and the proposed increase in frequency of Regulation S–X compliant portfolio information reporting.²⁸⁶ This estimate appears to reflect the total cost for the fund group (and not per fund) and given that the commenter stated that it manages 197 funds that file Form N–PORT reports, the average per fund internal staffing cost for this commenter would be approximately \$4,569 per year. Because we are not adopting the amendments to require more frequent reporting of Regulation S–X compliant

schedules of investments, and the commenter did not separately provide a cost for the acceleration of the filing deadline, this numerical estimate of internal staffing costs should be adjusted down.

After considering comments, we are adjusting upward the proposal's estimated collection of information burden in connection with the requirement to file Form N–PORT reports within 30 days of month end. In the Proposing Release, the Commission estimated that the reduction in the recordkeeping burden would be commensurate with the increased burden of filing the information that previously would have been preserved

as a record.²⁸⁷ We recognize that, as commenters suggested, there is an additional burden associating with filing information more frequently than with recordkeeping and are updating our burden estimates accordingly.

We have adjusted the proposal's estimated annual burden hours and external costs to reflect changes from the proposal (including, as noted in the chart below, aspects of the proposal that we are not adopting at this time), changes in the number of funds, and updated wage rates. The below table summarizes our initial and ongoing annual burden estimates associated with the amendments to Form N–PORT.

TABLE 3—FORM N–PORT PRA ESTIMATES

	Initial internal burden hours	Internal annual burden hours ¹		Wage rate ²	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES³						
[Aggregate Liquidity Classification Reporting] [Not Adopted]						
Funds that license a software solution to prepare Form N–PORT	3 hours	2 hours	×	\$381	\$762	\$250
Number of funds		× 4,021 funds			× 4,021 funds	× 4,021 funds
Funds that retain the services of a third-party vendor to prepare Form N–PORT	3 hours	2 hours	×	381	\$762	\$286
Number of funds		× 7,467 funds			× 7,467 funds	× 7,467 funds
Subtotal: Aggregate Liquidity Classification		22,976 hours			\$8,753,856	\$3,140,819
[Swing Pricing Reporting] [Not Adopted]						
Funds that license a software solution to prepare Form N–PORT	9 hours	4 hours	×	381	\$1,524	\$250
Number of funds		× 3,165 funds			× 3,165 funds	× 3,165 funds
Funds that retain the services of a third-party vendor to prepare Form N–PORT	9 hours	4 hours	×	381	\$1,524	\$286
Number of funds		× 5,878 funds			× 5,878 funds	× 5,878 funds
Subtotal: Swing Pricing Reporting		36,172 hours			\$13,781,532	\$2,472,356
[Other Proposed Amendments to Form N–PORT] [Adopted]						
Funds that license a software solution to prepare Form N–PORT		1 hours	×	381	\$381	
Number of funds		× 4,254 funds			× 4,254 funds	
Funds that retain the services of a third-party vendor to prepare Form N–PORT		1 hours	×	381	\$381	
Number of funds		× 7,899 funds			× 7,899 funds	
Subtotal: Other Proposed Amendments		12,153 hours			\$4,630,293	
Total Estimated Burdens for Proposed Amendments						
Total new annual burden		71,301 hours			\$27,165,681	\$5,613,175

²⁸⁵ See SIFMA AMG Comment Letter.

²⁸⁶ See T. Rowe Price Comment Letter.

²⁸⁷ See Proposing Release, *supra* note 11, at n.539 and accompanying text (stating that the Commission similarly did not adjust the PRA burden estimate when it amended Form N–PORT

in 2019 to move from a requirement to file reports monthly to a requirement to prepare the information monthly but file it quarterly).

TABLE 3—FORM N–PORT PRA ESTIMATES—Continued

	Initial internal burden hours	Internal annual burden hours ¹		Wage rate ²	Internal time costs	Annual external cost burden
Total Estimated Burdens, Including Proposed Amendments						
Current burden estimates .....	.....	1,848,326 hours	.....	.....	.....	\$108,457,536
Revised burden estimates .....	.....	1,919,627 hours	.....	.....	.....	\$114,070,711
FINAL ESTIMATES						
Funds that license a software solution to prepare Form N–PORT	6 hours	7 hours ⁴	×	420 ⁵	\$2,940	\$2,000
Number of funds .....	.....	× 4,396 funds ⁶	.....	.....	× 4,396 funds ⁶	× 4,396 funds ⁶
Funds that retain the services of a third-party vendor to prepare Form N–PORT	6 hours	5 hours ⁷	×	420 ⁵	\$2,100	\$4,000
Number of funds .....	.....	× 8,165 funds ⁶	.....	.....	× 8,165 funds ⁶	× 8,165 funds ⁶
Total new annual burden .....	.....	71,597 hours	.....	.....	\$30,070,740	\$41,452,000
Total Estimated Burdens, Including Final Amendments						
Current burden estimates .....	.....	1,929,237 hours	.....	.....	.....	\$136,290,893
Revised burden estimates .....	.....	2,000,834 hours	.....	.....	.....	\$177,742,893

Certain products and sums do not tie due to rounding.

Notes:

- Includes initial burden estimates annualized over a 3-year period.
- The Commission's estimates of the relevant wage rates are based on the salary information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff ("SIFMA Wage Report"). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.
- For additional detail about the proposed estimates, see Proposing Release, *supra* note 11, at section IV.D.
- Reflects an initial burden of 6 hours, annualized over a 3-year period, with an estimated ongoing annual burden of 5 hours.
- The \$420 wage rate reflects current estimates of the blended hourly rate for a senior programmer (\$399) and a compliance attorney (\$440).
- Based on Commission filings, we estimate that there are 12,561 funds that file reports on Form N–PORT. We estimate that 35% of these funds (or 4,396) would license a software solution to prepare Form N–PORT while 65% (or 8,165) would rely on a third-party vendor.
- Reflects an initial burden of 6 hours, annualized over a 3-year period, with an estimated ongoing annual burden of 3 hours.

C. Form N–CEN

Form N–CEN requires registered investment companies, other than face-amount certificate companies, to report annual, census-type information. Filers must submit this report electronically using the Commission's EDGAR system in a structured XML data language. We are amending Form N–CEN to require that an open-end fund that uses a liquidity classification service provider report certain information. Specifically, a fund will be required to report: (a) the name of each liquidity service provider; (b) identifying information, including the legal entity identifier and location, for each liquidity service provider; (c) if the liquidity service provider is affiliated with the fund or its investment adviser; (d) the asset classes for which that liquidity service provider provided classifications; and (e) whether the service provider was hired or terminated during the reporting period. We are also revising the approach to certain entity identifiers.²⁸⁸ Unlike the

proposal, we are not removing requirements that a filer report certain information regarding its use of swing pricing.

The respondents to these collections of information will be registered investment companies with the exception of face amount certificate companies. We estimate that there are 2,749 such registrants required to file on Form N–CEN.²⁸⁹ The final collections of information are mandatory. Responses are not kept confidential. The purpose of Form N–CEN is to satisfy the filing and disclosure requirements of section 30 of the Investment Company Act, and of 17 CFR 270.30a-1 (rule 30a-1) thereunder. The amendments are designed to facilitate the Commission's oversight of registered funds and its ability to assess trends and risks.

The Commission received one comment suggesting that the PRA estimates for the proposed amendments were too low.²⁹⁰ However, the context

of the letter does not suggest that the commenter was referring to the Form N–CEN amendments, as the commenter did not discuss that aspect of the proposal. We did not receive any comments specific to the proposed PRA estimates for the Form N–CEN amendments. We also did not receive any comments discussing the potential costs or burdens of the amendments to Form N–CEN. We have adjusted the proposal's estimated annual burden hours and external costs to reflect changes from the proposal, changes in the number of funds, and updated wage rates.

In our most recent PRA submission for Form N–CEN, we estimated the annual aggregate compliance burden to comply with the current collection of information requirements in Form N–CEN is 59,490 burden hours with an internal cost burden of \$24,152,940 and an external cost burden estimate of \$605,520.²⁹¹

²⁸⁸ We do not believe that the amendments to separate the concepts of LEI and RSSD ID more clearly in the form will change the burdens of the current form, as the form already requires a fund

to report the RSSD ID, if any, if a financial institution does not have an assigned LEI.

²⁸⁹ This estimate, which is as of Dec. 31, 2023, is based on Form N–CEN filings.

²⁹⁰ See Calamos Comment Letter.

²⁹¹ The most recent Form N–CEN PRA submission was approved in 2024 (OMB Control No. 3235-0729). The estimates in the Proposing Release were based on earlier approved estimates (54,890 hours and \$1,344,981 external cost burden),

The below table summarizes our initial and ongoing annual burden

estimates associated with the amendments to Form N-CEN.

TABLE 4—FORM N-CEN PRA ESTIMATES

	Initial internal burden hours	Internal annual burden hours ¹		Wage rate ²	Internal time costs	Annual external cost burden
PROPOSED ESTIMATES³						
Liquidity Service Provider Reporting	1.5 hours	1 hour	×	\$381	\$381	
Number of registrants		× 2,754 registrants			× 2,754 registrants	
		2,754 hours			\$1,049,274	
Subtotal: Liquidity Service Provider Reporting						
Removal of Swing Pricing Reporting		(0.5) hours	×	351	\$(175.5)	
[not adopted]		× 9,854 funds			× 9,854 funds	
Number of funds						
Subtotal: Removal of Swing Pricing Reporting		(4,927 hours)			\$(1,729,377)	
Total new annual burden		(2,173 hours)			(\$680,103)	
Total Estimated Burdens, Including Proposed Amendments						
Current burden estimates		54,890 hours				\$1,344,981
Revised burden estimates		52,718 hours				\$1,344,981
FINAL ESTIMATES						
Liquidity Service Provider Reporting	1.5 hours	1 hour ⁴	×	420 ⁵	\$420	
Number of registrants		× 2,749 registrants			× 2,749 registrants	
Subtotal: Liquidity Service Provider Reporting		2,749 hours			\$1,154,580	
Total Estimated Burdens, Including Final Amendments						
Current burden estimates		59,490 hours				\$605,520
Revised burden estimates		62,239 hours				\$605,520

Notes:

1. Includes initial burden estimates annualized over a 3-year period.
2. See *supra* Table 3, at note 2.
3. For additional detail about the proposed estimates, see Proposing Release, *supra* note 11, at section IV.D.
4. Reflects an initial burden of 1.5 hours, annualized over a 3-year period, with an estimated ongoing annual burden of 0.5 hours.
5. The \$420 wage rate reflects current estimates of the blended hourly rate for a senior programmer (\$399) and a compliance attorney (\$440).

VI. Final Regulatory Flexibility Analysis

The Commission has prepared the following Final Regulatory Flexibility Analysis (“FRFA”) in accordance with section 604 of the Regulatory Flexibility Act (“RFA”).²⁹² It relates to the final amendments to Form N-PORT and Form N-CEN. The Proposing Release included an Initial Regulatory Flexibility Act Analysis (“IRFA”), which solicited comment and was prepared in accordance with the RFA.

A. Need for and Objectives of the Rule and Form Amendments

The Commission is adopting amendments to reporting requirements that will apply to certain registered investment companies, including registered open-end funds, registered closed-end funds, and unit investment trusts. The final amendments to rule 30b1–9 and Form N-PORT are designed to improve transparency and facilitate better monitoring of funds by requiring more timely reporting of monthly

portfolio holdings and related information to the Commission and the public. The final amendments to Form N-CEN are designed to provide the Commission with information about fund service providers used to comply with liquidity risk management program requirements. This information will allow the Commission and other participants to track certain liquidity risk management practices. Each of these objectives is discussed in detail in section II above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, the Commission requested comment on every aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the existence or nature of the potential impact of the proposed amendments on small entities, and how to quantify the impact of the proposed amendments. The Commission also requested comment on the proposed compliance

burdens and the effect these burdens would have on small entities.

The Commission did not receive comments specifically addressing the IRFA. However, one commenter suggested that filing Form N-PORT reports within 30 days of month end would present significant resource issues for small funds for certain months, such as the months following a fund’s annual and semiannual reporting periods.²⁹³ This commenter also stated that additional time would be needed for eight months of the year if funds are required to include Regulation S-X compliant portfolio schedules with more frequency, as proposed. The commenter suggested that the Commission provide 60 days after month end to file reports on Form N-PORT, at least for small funds. Another commenter suggested that the Commission should provide an extended compliance period for smaller funds, which would ease compliance burdens because smaller funds can leverage the experiences and learning

and these earlier approved estimates are reflected

in the “Proposed Estimates” section of the below table.

²⁹² 5 U.S.C. 604.

²⁹³ See Singer Comment Letter.

gained by larger funds going first.²⁹⁴ The only commenter that addressed the proposed Form N-CEN amendments was supportive.²⁹⁵

In addition, a number of commenters stated that requiring monthly reporting within 30 days of month end would overburden funds, service providers, or funds' internal systems and processes.²⁹⁶ Some commenters had concerns that the other amendments to Form N-PORT would also result in significant burdens for funds and additional costs to fund shareholders.²⁹⁷

We recognize that filing the recorded information within the 30-day deadline will increase burdens for funds and their service providers, including for small entities. To mitigate costs, we are providing an extended implementation period for smaller funds during which funds will be able to update their Form N-PORT reporting processes to prepare for the requirement to file monthly information within 30 days of month end and potentially benefit from the lessons learned by larger funds during the implementation period. Additionally, we are persuaded by commenters who expressed that the costs of the proposed requirement to attach a Regulation S-X compliant schedule of portfolio investments may not justify the benefits, particularly given the costs and time currently involved with preparing such a schedule and the other sources of portfolio information available to investors. Therefore, we are not adopting the proposed amendments to require funds to present portfolio holdings in accordance with Regulation S-X more frequently than currently required.

C. Small Entities Subject to Rule Amendments

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of \$50 million or less as of the end of its most recent fiscal year. Commission staff estimates that, as of December 2023, there were 40 open-end management investment companies that would be considered small entities; this number includes 2 money market funds

and 9 ETFs. Commission staff also estimates that, as of December 2023, there were 29 closed-end registered management investment companies and 3 unit investment trusts that would be considered small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

We are adopting final amendments to reporting requirements on Forms N-PORT and N-CEN. The final amendments will require more frequent reporting of monthly portfolio holdings and related information, amend reporting requirements regarding certain identifiers, and require open-end funds to report information about service providers used to comply with liquidity risk management program requirements.

Form N-PORT requires open-end and closed-end funds, as well as ETFs organized as UITs, to report monthly portfolio holdings information in a structured, XML data language. We estimate that 67 small funds will be subject to the amendments to Form N-PORT. The final amendments will require funds to file reports on Form N-PORT on a monthly basis within 30 days after the end of the month to which they relate. Monthly reporting rather than quarterly reporting will provide more timely information to the Commission, which will enhance the Commission staff's ability to oversee and monitor the activities of funds effectively to better carry out our regulatory functions, consistent with the goals of Form N-PORT reporting.

Funds are already required to produce monthly data upon request by Commission staff and to adhere to the 30-day deadline for recordkeeping purposes.²⁹⁸ We recognize, however, that filing the recorded information within the 30-day deadline will increase burdens for funds and their service providers relative to the current quarterly filing requirement. Because funds, including small funds, currently are required to gather the Form N-PORT data and ensure its accuracy within 30 days of month end, the costs involved with the final amendments are limited to those associated with a more condensed filing process.

In addition to the amendments requiring more timely reporting of information, we are amending the existing requirements related to the reporting of certain flow information and regarding the "miscellaneous securities" bucket to align with the new monthly filing cadence and public availability of Form N-PORT.

Form N-CEN is used to collect annual, census-type information for all registered investment companies, other than face-amount certificate companies. Filers must submit this report electronically using the Commission's EDGAR system in XML data language. We estimate that 72 small funds will be subject to the amendments to Form N-CEN, but some of the amendments apply only to 38 small funds that are subject to the liquidity rule. We are adopting amendments to Form N-CEN to require funds that are subject to the liquidity rule to identify and provide certain information about service providers that a fund uses to fulfill the requirements of that rule. This information will allow the Commission and other participants to track certain liquidity risk management practices and will help us better understand potential trends or outliers in funds' liquidity classifications.

We are also adopting amendments to Form N-PORT and Form N-CEN to revise the definition of LEI to require funds to identify specifically whether they are reporting an LEI or an RSSD ID, although the amendments will not change the circumstances in which a fund is required to report an LEI or an RSSD ID, if available. The change is designed to improve consistency and comparability of information funds report about the instruments they hold, including issuers of those instruments and counterparties to certain transactions. Funds already report the information to which these amendments relate, so these amendments will not have a significant economic impact.

The final amendments will impose burdens on all Form N-PORT and Form N-CEN filers, including those that are small entities. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections. These sections also discuss the professional skills that we believe compliance with the final amendments will require. We recognize that, due to economies of scale, the costs associated with the final amendments to Form N-PORT and Form N-CEN may be more easily borne by larger fund complexes than smaller ones, and that costs borne by funds may be passed along to investors in the form of higher fees and expenses.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. We considered the following

²⁹⁴ See ICI Comment Letter I.

²⁹⁵ See Myer Comment Letter.

²⁹⁶ See, e.g., Fidelity Comment Letter; ICI Comment Letter I; Singer Comment Letter; T. Rowe Comment Letter.

²⁹⁷ See, e.g., Capital Group Comment Letter; ICI Comment Letter I (stating that, because a Regulation S-X compliant schedule of investments is not necessary for fund shareholders to understand a fund's portfolio holdings, requiring the schedule of investments on a monthly basis would provide little benefit to investors); SIFMA AMG Comment Letter.

²⁹⁸ Rule 30b1-9.

alternatives for small entities in relation to our proposal: (1) exempting funds that are small entities from all or part of the proposed reporting requirements, to account for resources available to small entities; (2) establishing different reporting requirements or frequency, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance and reporting requirements under the proposal for small entities; and (4) using performance rather than design standards.

We do not believe that exempting small funds from the provisions of the final amendments, or providing different requirements or reporting frequencies for small funds, will permit us to achieve our stated objectives. If the final rules were to include different requirements for small funds or exempt small funds, this could raise investor protection concerns for investors in small funds, for example if Commission staff were not able efficiently to identify small funds affected in a market stress event. This also would result in the Commission, investors, and other users of Form N-PORT data having less transparency and insight with respect to those smaller funds. The potential staleness of Form N-PORT data for small entities (if small entities were exempted from the final amendments) would, among other things, limit the Commission staff's ability to develop a more complete understanding of the market on a timely basis and impede our ability to contribute fully to interagency discussions and responses to market events.

Finally, we do not believe that clarifying, consolidating, or simplifying the compliance requirements under the final amendments for small funds, beyond those already required for all funds, would permit us to achieve our stated objectives. Again, this approach would raise investor protection concerns for investors in small funds, reduce transparency, and hinder the Commission staff's monitoring of small funds. With respect to using performance rather than design standards, the amendments primarily use design rather than performance standards to promote more consistent and uniform reporting standards for all funds.

The costs associated with the final amendments will vary depending on a fund's particular circumstances, and thus the amendments may result in different burdens on funds' resources. We recognize that filing the recorded information within the 30-day deadline will increase burdens for funds and their service providers. Because funds,

including small funds, currently are required to gather the Form N-PORT data within 30 days of month end, the costs involved with the final amendments are limited to those associated with a more condensed filing process. To mitigate costs, we are providing an extended implementation period during which small funds will be able to update their Form N-PORT reporting processes to prepare for the requirement to file monthly information within 30 days of month end and potentially benefit from the lessons learned by larger funds during the implementation period. In addition, we are not adopting certain of the proposed amendments to Form N-PORT, such as the proposed requirement to report Regulation S-X compliant portfolio schedules more frequently, which commenters stated would be burdensome for funds, including small funds.

Statutory Authority

The Commission is adopting the rule and form amendments contained in this document under the authority set forth in the Investment Company Act, particularly sections 8, 24, 30, 31, and 38 thereof [15 U.S.C. 80a-1 *et seq.*].

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

- 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, 80a-39, 1681w(a)(1), 6801-6809, 6825, and Pub. L. 111-203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

- 2. Effective November 17, 2025, amend § 270.30b1-9 by revising it to read as follows:

§ 270.30b1-9 Monthly report.

Each registered management investment company or exchange-traded fund organized as a unit investment trust, or series thereof, other than a registered open-end management investment company that is regulated as a money market fund under § 270.2a-7 or a small business investment company registered on Form N-5 (§§ 239.24 and 274.5 of this chapter), must file a

monthly report of portfolio holdings on Form N-PORT (§ 274.150 of this chapter), current as of the last business day, or last calendar day, of the month. A registered investment company that has filed a registration statement with the Commission registering an offering of its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn. Reports on Form N-PORT must be filed with the Commission no later than 30 days after the end of each month. Each registered investment company that is required to file reports on Form N-PORT and that does not file monthly reports within 30 days after the end of each month must maintain in its records the information that is required to be included on Form N-PORT no later than 30 days after the end of each month for which it does not file a monthly report within that period. Such information shall be treated as a record under section 31(a)(1) of the Act [15 U.S.C. 80a-30(a)(1)] and § 270.31a-1(b) subject to the requirements of § 270.31a-2(a)(2).

§ 270.30b1-9 [Amended]

- 3. Effective May 18, 2026, further amend § 270.30b1-9 by removing the last two sentences.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

- 4. The general authority citation for part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78n-1, 78o(d), 80a-8, 80a-24, 80a-26, 80a-29, and sec. 939A, Pub. L. 111-203, 124 Stat. 1376, unless otherwise noted.

* * * * *

- 5. Amend Form N-CEN (referenced in § 274.101) by:

- a. Revising General Instruction E and Items B.16, B.17, C.5, C.6, C.9, C.10, C.11, C.12, C.13, C.14, C.15, C.16, and C.17;

- b. Adding Item C.22; and

- c. Revising Items D.12, D.13, D.14, E.2, F.1, F.2, F.4, and Instructions to Item G.1.

Note: Form N-CEN is attached as Appendix A to this document. Form N-CEN will not appear in the Code of Federal Regulations.

- 6. Amend § 274.150, by revising paragraph (a) to read as follows:

§ 274.150 Form N-PORT, Monthly portfolios holdings report.

(a) Except as provided in paragraph (b) of this section, this form shall be used by registered management investment companies or exchange-traded funds organized as unit investment trusts, or series thereof, to file reports pursuant to § 270.30b1-9 of this chapter not later than 30 days after the end of each month.

* * * * *

■ 7. Amend Form N-PORT (referenced in § 274.150) by revising General Instructions A, E, and F and Items B.4, B.5, B.6, C.1, C.10, C.11, and Part D.

Note: Form N-PORT is attached as Appendix B to this document. Form N-PORT will not appear in the Code of Federal Regulations.

By the Commission.

Dated: August 28, 2024.

Vanessa A. Countryman,
Secretary.

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

Appendix A—Form N-CEN**Form N-CEN**

* * * * *

General Instructions

* * * * *

E. Definitions

Except as defined below or where the context clearly indicates the contrary, terms used in Form N-CEN have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form or its instructions to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

In addition, the following definitions apply:

“*Class*” means a class of shares issued by a Fund that has more than one class that represents interest in the same portfolio of securities under rule 18f-3 under the Act (17 CFR 270.18f-3) or under an order exempting the Fund from provisions of section 18 of the Act (15 U.S.C. 80a-18).

“*CRD number*” means a central licensing and registration system number issued by the Financial Industry Regulatory Authority.

“*Exchange-Traded Fund*” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on rule 6c-11 under the Act (17 CFR 270.6c-11).

“*Exchange-Traded Managed Fund*” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national

securities exchange at net asset value-based prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

“*Fund*” means the Registrant or a separate Series of the Registrant. When an item of Form N-CEN specifically applies to a Registrant or Series, those terms will be used.

“*LEI*” means, with respect to any company, the “legal entity identifier” as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

“*Money Market Fund*” means an open-end management investment company registered under the Act, or Series thereof, that is regulated as a money market fund pursuant to rule 2a-7 under the Act (17 CFR 270.2a-7).

“*PCAOB number*” means the registration number issued to an independent public accountant registered with the Public Company Accounting Oversight Board.

“*Registrant*” means the investment company filing this report or on whose behalf the report is filed.

“*RSSD ID*” means the identifier assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.

“*SEC File number*” means the number assigned to an entity by the Commission when that entity registered with the Commission in the capacity in which it is named in Form N-CEN.

“*Series*” means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other Series of shares for assets specifically allocated to that Series in accordance with rule 18f-2(a) (17 CFR 270.18f-2(a)).

* * * * *

Item B.16. Principal underwriters.

a. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item B.17. Independent public accountant. Provide the following information about each independent public accountant:

* * * * *

c. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.5. Investments in certain foreign corporations.

* * * * *

b. * * *

ii. LEI of subsidiary, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.6. Securities lending.

* * * * *

c. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

v. * * *

2. LEI, if any, of person providing indemnification: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

d. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.9. Investment advisers.

a. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

b. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

c. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

d. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.10. Transfer agents.

a. * * *

iii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.11. Pricing services

a. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

or

Provide and describe other identifying number: ____

* * * * *

Item C.12. Custodians

a. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.13. Shareholder servicing agents.

a. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

or

Provide and describe other identifying number: ____

* * * * *

Item C.14. Administrators

a. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

or

Provide and describe other identifying number: ____

* * * * *

Item C.15. Affiliated broker-dealers.

Provide the following information about each affiliated broker-dealer:

* * * * *

d. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.16. Brokers.

a. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.17. Principal transactions.

a. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item C.22. Liquidity classification services. For open-end management investment companies subject to rule 22e-4 (17 CFR 270.22e-4), respond to the following:

a. Provide the following information about each person that provided liquidity classification services to the Fund during the reporting period:

i. Full name: ____

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

or

Provide and describe other identifying number: ____

iii. State, if applicable: ____

iv. Foreign country, if applicable: ____

v. Is the liquidity classification service an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vi. Asset class(es) for which liquidity classification services were provided to the Fund: ____

b. Was a liquidity classification service hired or terminated during the reporting period? [Y/N]

* * * * *

Item D.12. Investment advisers (small business investment companies only).

a. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

b. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

c. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

d. * * *

iv. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item D.13. Transfer agents (small business investment companies only).

a. * * *

iii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item D.14. Custodians (small business investment companies only).

a. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item E.2. Authorized participants. For each authorized participant of the Fund, provide the following information:

* * * * *

d. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item F.1. Depositor. Provide the following information about each depositor:

* * * * *

c. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item F.2. Administrators.

a. * * *

ii. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

or

Provide and describe other identifying number: ____

* * * * *

Item F.4. Sponsor. Provide the following information about each sponsor:

* * * * *

c. LEI, if any: ____ or

If no LEI is provided, RSSD ID, if any: ____

* * * * *

Item G.1. Attachments.

* * * * *

Instructions.

* * * * *

2. * * *

(f) Security supported (if applicable).

Disclose the full name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (e.g., CIK, CUSIP, ISIN, LEI, RSSD ID).

* * * * *

Appendix B—Form N-PORT

Form N-PORT

* * * * *

General Instructions

A. Rule as to Use of Form N-PORT

Form N-PORT is the reporting form that is to be used for monthly reports of Funds other than money market funds and SBICs under section 30(b) of the Act, as required by rule 30b1-9 under the Act (17 CFR 270.30b1-9). Funds must report information about their portfolios and each of their portfolio holdings as of the last business day, or last calendar day, of each month, other than the information reported in Items B.11 and C.2.e, which Funds must report quarterly about their portfolios and each of their portfolio holdings as of the last business day, or calendar day, of the third month of the quarter. A registered investment company that has filed a registration statement with the Commission registering an offering of its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

Reports on Form N-PORT must disclose portfolio information as calculated by the fund for the reporting period's ending net asset value (commonly, and as permitted by rule 2a-4, the first business day following the trade date). Reports on Form N-PORT for each month must be filed with the Commission no later than 30 days after the end of such month. If the due date falls on a weekend or holiday, the

filing deadline will be the next business day.

A Fund may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A Fund that files an amendment to a previously filed report must provide information in response to all items of Form N-PORT, regardless of why the amendment is filed.

* * * * *

E. Definitions

References to sections and rules in this Form N-PORT are to the Act, unless otherwise indicated. Terms used in this Form N-PORT have the same meanings as in the Act or related rules (including rule 18f-4 solely for Items B.9 and 10 of the Form), unless otherwise indicated.

As used in this Form N-PORT, the terms set out below have the following meanings:

“Absolute VaR Test” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Class” means a class of shares issued by a Fund that has more than one class that represents interests in the same portfolio of securities under rule 18f-3 [17 CFR 270.18f-3] or under an order exempting the Fund from provisions of section 18 of the Act [15 U.S.C. 80a-18].

“Controlled Foreign Corporation” has the meaning provided in section 957 of the Internal Revenue Code [26 U.S.C. 957].

“Derivatives Exposure” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Designated Index” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Designated Reference Portfolio” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Exchange-Traded Fund” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on rule 6c-11 [17 CFR 270.6c-11].

“Fund” means the Registrant or a separate Series of the Registrant. When an item of Form N-PORT specifically applies to a Registrant or a Series, those terms will be used.

“Highly Liquid Investment Minimum” has the meaning defined in rule 22e-4(a)(7) [17 CFR 270.22e-4(a)(7)].

“Illiquid Investment” has the meaning defined in rule 22e-4(a)(8) [17 CFR 270.22e-4(a)(8)].

“ISIN” means, with respect to any security, the “international securities identification number” assigned by a national numbering agency, partner, or substitute agency that is coordinated by the Association of National Numbering Agencies.

“LEI” means, with respect to any company, the “legal entity identifier” as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

“Multiple Class Fund” means a Fund that has more than one Class.

“Registrant” means a management investment company, or an Exchange-Traded Fund organized as a unit investment trust, registered under the Act.

“Relative VaR Test” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Restricted Security” has the meaning defined in rule 144(a)(3) under the Securities Act of 1933 [17 CFR 230.144(a)(3)].

“RSSD ID” means the identifier assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.

“Securities Portfolio” has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“Series” means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f-2(a) [17 CFR 270.18f-2(a)].

“Swap” means either a “security-based swap” or a “swap” as defined in sections 3(a)(68) and (69) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(68) and (69)] and any rules, regulations, or interpretations of the Commission with respect to such instruments.

“Value-at-Risk” or VaR has the meaning defined in rule 18f-4(a) [17 CFR 270.18f-4(a)].

“VaR Ratio” means the value of the Fund’s portfolio VaR divided by the VaR of the Designated Reference Portfolio.

F. Public Availability

Information reported on Form N-PORT will be made publicly available 60 days after the end of the reporting period.

The SEC does not intend to make public the information reported on Form N-PORT with respect to a Fund’s Highly Liquid Investment Minimum (Item B.7), derivatives transactions (Item B.8), Derivatives Exposure for limited derivatives users (Item B.9), median daily VaR (Item B.10.a), median VaR Ratio (Item B.10.b.iii), VaR backtesting results (Item B.10.c), country of risk and economic exposure (Item C.5.b), delta (Items C.9.f.v, C.11.c.vii, or C.11.g.iv), liquidity classification for portfolio investments (Item C.7), or miscellaneous securities (Part D), or explanatory notes related to any of those topics (Part E) that is identifiable to any particular fund or adviser. However, the SEC may use information reported on this Form in its regulatory programs, including examinations, investigations, and enforcement actions.

* * * * *

Item B.4. Securities Lending

a. * * *

ii. LEI (if any) of borrower.

If the borrower does not have an LEI, provide the borrower’s RSSD ID, if any.

* * * * *

Item B.5. Return Information

a. Total return of the Fund during the reporting period. If the Fund is a Multiple Class Fund, report the return for each Class. Such return(s) shall be calculated in accordance with the methodologies outlined in Item 26(b)(1) of Form N-1A, Instruction 13 to sub-Item 1 of Item 4 of Form N-2, or Item 26(b)(i) of Form N-3, as applicable.

* * * * *

c. Net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to derivatives for each of the following asset categories during the reporting period: commodity contracts, credit contracts, equity contracts, foreign exchange contracts, interest rate contracts, and other contracts. Within each such asset category, further report the same information for each of the following types of derivatives instrument: forward, future, option, swaption, swap, warrant, and other. Report in U.S. dollars. Report losses and depreciation as negative numbers.

d. Net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to investments other than derivatives during the reporting period. Report in U.S. dollars. Report losses and depreciation as negative numbers.

Item B.6. Flow information. Provide the aggregate dollar amounts for sales and

redemptions/repurchases of Fund shares during the reporting period. If shares of the Fund are held in omnibus accounts, for purposes of calculating the Fund’s sales, redemptions, and repurchases, use net sales or redemptions/repurchases from such omnibus accounts. The amounts to be reported under this Item should be after any front-end sales load has been deducted and before any deferred or contingent deferred sales load or charge has been deducted. Shares sold shall include shares sold by the Fund to a registered unit investment trust. For mergers and other acquisitions, include in the value of shares sold any transaction in which the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares. For liquidations, include in the value of shares redeemed any transaction in which the Fund liquidated all or part of its assets. Exchanges are defined as the redemption or repurchase of shares of one Fund or series and the investment of all or part of the proceeds in shares of another Fund or series in the same family of investment companies.

* * * * *

Item C.1. Identification of investment.

* * * * *

b. LEI (if any) of issuer. In the case of a holding in a fund that is a series of a series trust, report the LEI of the series.

If the issuer does not have an LEI, provide the issuer’s RSSD ID, if any.

* * * * *

Item C.10. For repurchase and reverse repurchase agreements, also provide:

* * * * *

b. * * *

ii. If N, provide the name and LEI (if any) of counterparty.

If the counterparty does not have an LEI, provide the counterparty’s RSSD ID, if any.

* * * * *

Item C.11. For derivatives, also provide:

* * * * *

b. * * *

i. Provide the name and LEI (if any) of counterparty (including a central counterparty).

If the counterparty does not have an LEI, provide the counterparty’s RSSD ID, if any.

* * * * *

Part D: Miscellaneous Securities

Report miscellaneous securities, if any, using the same Item numbers and reporting the same information that would be reported for each investment in Part C if it were not a miscellaneous security. Information reported in this Item will be nonpublic.

[FR Doc. 2024–19819 Filed 9–10–24; 8:45 am]

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Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

Release No. 34–100938; File No. SR–CBOE–2024–038]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 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 22, 2024, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its fee schedule entitled “Consolidated Audit Trail Funding Fees” ³ to establish fees for Industry Members ⁴ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”) ⁵ and referred to as Historical CAT Assessment 1. The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT

Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. 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.

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.⁶ On November 15, 2016, the Commission approved the CAT NMS Plan.⁷ 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.⁸ 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.⁹

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 (“Prospective CAT Costs” fees).¹⁰

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).” ¹¹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹²

⁹ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

¹⁰ 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 only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹¹ Section 11.3(b) of the CAT NMS Plan.

¹² In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange and each of its affiliated exchanges (Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.) are filing to adopt the same amendment to this fee schedule.

⁴ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Exchange Rule 7.20(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 Chapter 7, Section B of the Exchange’s Rulebook.

⁵ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁶ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁷ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁸ Section 11.1(b) of the CAT NMS Plan.

Each Historical CAT Assessment to be paid by CEBBs and CEBs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹³ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, 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.'" ¹⁴ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁵ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁶

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁷ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁸ 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.¹⁹

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)²⁰

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)²¹

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

via the Historical CAT Assessment is reasonable." CAT Funding Model Approval Order at 62662.

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

¹⁴ Section 11.1(b) of the CAT NMS Plan.

¹⁵ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁶ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁷ Securities Exchange Act Release No. 34–99364 (January 17, 2024), 89 FR 10887 (February 13, 2024) (SR-CBOE–2024–003).

¹⁸ 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.

¹⁹ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs 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.

²⁰ 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").

²¹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

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: *[sic]*

TRF/ORF/ADF TRANSACTION DATA EVENT (TRF)²²

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 Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBSSs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, 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 shall be counted as 0.01 executed equivalent share.²³

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²⁴ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBSSs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, 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.”²⁵ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBSSs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

²² See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²³ Section 11.3(a)(i)(B) and 11.3(b)(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.

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

²⁵ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs:	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁶

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and

capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost 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. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁷ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as

"CAT LLC"),²⁸ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁹

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS 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 the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided 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[.]

²⁶ 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.

²⁷ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁸ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁹ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

process and load more than 58 billion records per day,”³⁰ and that “[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.”³¹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these

predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³² Phase 2a and Phase 2b Industry Member Data³³ (including certain linkages), as well as SIP Data,³⁴ reference data and other types of Other

Data.³⁵ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁶

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. 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.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁷ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the

following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

- FINRA’s specialized technical expertise and capabilities in the area of broker-dealer technology;
 - The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;
 - FINRA’s detailed proposal in response to CATLLC’s recent inquiries; and
 - FINRA’s data query and analytics systems demonstration to the Participants.
- Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁸

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁹ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

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. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor’s activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated (“Exegy”), a market data provider;⁴⁰
- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
 - Facilitated testing for Phase 2a and 2b reporting for Industry Members;
 - Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after

³⁰ Appendix D–4 of the CAT NMS Plan at n.262.

³¹ Appendix D–5 of the CAT NMS Plan.

³² See Section 6.3(d) of the CAT NMS Plan.

³³ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) (“Phased Reporting Exemptive Relief Order”) for a description of Phase 2a and Phase 2b Industry Member Data.

³⁴ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁵ See Appendix C–108 of the CAT NMS Plan.

³⁶ Note that the volume data described in this table does not include CAIS data.

³⁷ The term “Bidder” is defined in Section 1.1 of the CAT NMS Plan.

³⁸ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields,

Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁹ *Id.*

⁴⁰ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;
- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;
- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴¹ and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). 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.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland'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. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴² Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴³

(d) Technology Costs—Change Request Fees

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 change 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. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴⁴

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁵ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

⁴⁴ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴¹ The CAT website is <https://www.catnmsplan.com>.

⁴² For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴³ Phased Reporting Exemptive Relief Order at 23079–80.

Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services

provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

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. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;

- Assisted with the RFP and bidding process for the CAT Plan Processor;

- Analyzed legal matters related to the Development Advisory Group ("DAG");

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;

- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;

- Provided assistance with compliance with Regulation SCI;

- Assisted with clock synchronization study;

- Provided assistance with respect to the establishment of CAT security;

- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided advice regarding CAT policies and procedures;

- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and

- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, 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.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. 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.

To help facilitate project management given the unprecedented complexity

and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [sic] office and workstream design;

- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;

- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided 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;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security

liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

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.⁴⁶ The professional and administration costs 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. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁷ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications

⁴⁶ Section 9.2 of the CAT NMS Plan.

⁴⁷ See Section 6.5(a)(ii) of the CAT NMS Plan.

services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided 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 were 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.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁸ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs:	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁹

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities

transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁵⁰ CAT LLC completed the requirements of FAM

Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

⁴⁸ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁹ As discussed above, 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.

⁵⁰ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 1 Period. Accordingly, the \$2,642,122 in

technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of

the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵¹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

- Administered the CAT website and all of its content; and
 - Provided 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.
- (c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland

continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such

⁵¹ Note that the volume data described in this table does not include CAIS data.

costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵² which

covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
Technology Costs:	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵³

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵⁴

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁵

⁵² Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵³ As discussed above, 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.

⁵⁴ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵⁵ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the

CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public

relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁶ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs:	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁷

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁸

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage

⁵⁶ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁷ As discussed above, 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.

⁵⁸ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

footprint of the CAT during FAM Period 3.⁵⁹

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT

Alerts, meetings, presentations and webinars;

- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the

following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington &

⁵⁹ Note that the volume data described in this table does not include CAIS data.

Burling LLP (“Covington”) during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC’s proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC’s exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC’s April 6, 2021 order instituting proceedings,⁶⁰ and assessed legal matters regarding the SEC’s October 29, 2021 order denying the proposed Plan amendment.⁶¹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶² CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with

respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC’s disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT’s response to the SEC’s disapproval order. This work accounted for a minority of Covington’s fees in 2021.⁶³

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte’s CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors’ and officers’ liability insurance, and errors

⁶⁰ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶¹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶² See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the “2020 Orders”).

⁶³ As discussed above with regard to Pillsbury’s work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC’s efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the

accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15,

2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶⁴

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁴ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs:	
Cloud Hosting Services.	
Operating Fees.	
CAIS Operating Fees.	
Change Request Fees.	
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	\$48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g.,

Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided 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).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs

paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁵ which was the date by which Participants were required to begin reporting to the CAT.⁶⁶ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁷ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁸ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery

⁶⁵ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁶ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁷ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁸ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁹ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁷⁰ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷¹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. 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 Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months." ⁷² 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.⁷³

The total executed equivalent share volume of transactions in Eligible

⁶⁹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁷⁰ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷¹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷² Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷³ CAT Funding Model Approval Order at 62664.

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 the 24 months of Historical Recovery Period 1 by doubling 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷⁴

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 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 Historical CAT Assessment.⁷⁵

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁶ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate

in a fee filing for a Historical CAT Assessment.⁷⁷

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁸

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁹

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁸⁰ A CEBB 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.⁸¹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

⁷⁷ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁸ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁹ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁸⁰ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸¹ See proposed paragraph (a)(1)(B) of the fee schedule.

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸² Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸³

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a 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 Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸⁴

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each

⁸² Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸³ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸⁴ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁵ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁶ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 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 \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

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

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁵ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁶ 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)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth

in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 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)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 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 \$0.000013 per executed equivalent share."

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that "Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time." This proposed paragraph would further state that "Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect."

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical

CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that "[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b)."

(B) Manner of Payment

Paragraph (b)(1) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states 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." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁷ The Plan Processor has established a billing system for CAT fees.⁸⁸ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(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;

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸⁸ 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.

⁸⁵ CAT Funding Model Approval Order at 62658, n.658.

⁸⁶ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

or (b) the maximum rate permitted by applicable law.⁸⁹

Accordingly, the Exchange previously has added this requirement to the Exchange's fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

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 Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each 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.⁹⁰

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹¹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, 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 on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹² 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 Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 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 Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) 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 Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹³ The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹⁴ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹⁵ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

⁸⁹ Section 11.4 of the CAT NMS Plan.

⁹⁰ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹¹ 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.

⁹² 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.

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

⁹⁴ Section 11.6(b) of the CAT NMS Plan.

⁹⁵ Section 11.6 of the CAT NMS Plan.

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.⁹⁶ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁷ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁸

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁹ 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.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰¹ 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.

⁹⁶ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁸ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these 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.

⁹⁹ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰¹ FAM Adopting Release at 31330, n.98.

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.¹⁰²

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order

cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. 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 fourth quarter of 2020,¹⁰³ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰⁴ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁵
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

¹⁰³ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁴ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁵ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁶ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and

¹⁰⁶ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁸ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰² Phased Reporting Exemptive Relief Order at 23078.

CEBSs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. 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 fourth quarter of 2021,¹⁰⁹ Full Availability and Regulatory Utilization of Transactional Database

Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹¹⁰ FINRA retired OATS effective September 1, 2021.¹¹¹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. 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 orders(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.¹¹²

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.¹¹³

¹¹⁰ *Id.*

¹¹¹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹² Phase Reporting Exemptive Relief Order at 23078–79.

¹¹³ *Id.* at 23079.

¹⁰⁹ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

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.¹¹⁴

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 will include 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).¹¹⁵

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁶ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c

and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁷

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, 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, 2021.¹¹⁸

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁹

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹²⁰

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for

¹¹⁷ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹²⁰ Settlement Exemptive Order at 77129 n.13.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 23079–80.

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain *[sic]* two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²¹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not

considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²²

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²³ Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²⁴

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule

613(j)(8).¹²⁵ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁶

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁷ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁸ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only

¹²¹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²² See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²³ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²⁴ *Id.*

¹²⁵ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁶ *Id.* at n.11.

¹²⁷ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁸ *Id.* at 10.

cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the "2020 Verbal Quotes Order").¹²⁹ The Commission has stated that, "to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied."¹³⁰ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³¹

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability

Milestones."¹³² The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³³ Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³⁴

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁵ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting

services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁶ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan.

¹³⁶ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹²⁹ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the "2020 Verbal Quotes Exemption").

¹³⁰ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³¹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³² *Id.* at 77129 n.12.

¹³³ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³⁴ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³⁵ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁷

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁸

In the context of the SEC's adoption of Rule 613, commenters urged the

Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁹ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹⁴⁰

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴¹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴²

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable

approach.¹⁴³ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')." ¹⁴⁴ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail." ¹⁴⁵

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁶ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁷ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor." ¹⁴⁸

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which

¹³⁷ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁸ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁹ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹⁴⁰ Rule 613 Adopting Release at 45738–39.

¹⁴¹ Rule 613 Adopting Release at 45739.

¹⁴² Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 11153.

¹⁴⁵ *Id.* at 11159.

¹⁴⁶ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁷ See Selection Plan Approval Order.

¹⁴⁸ Selection Plan Approval Order at 11160.

bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out

in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁹

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁵⁰

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some

provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵¹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵² The Participants filed two supplements to the request for exemptive relief.¹⁵³

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵⁴ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁵

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or

¹⁵¹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵² Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵³ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵⁴ See 2016 Exemptive Order.

¹⁵⁵ *Id.* at 11857.

¹⁴⁹ See CAT NMS Plan Approval Order at 84737.

¹⁵⁰ See Section D(11) of Appendix C of the CAT NMS Plan.

otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (*e.g.*, lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁶

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁷

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted

two extensions of this deadline.¹⁵⁸ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁹ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁶⁰ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶¹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶² Following the comment period, the SEC approved the Plan in November 2016.¹⁶³

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for

WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement.

¹⁵⁸ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁹ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁶⁰ March 2013 Exemptive Order at 15772.

¹⁶¹ *Id.* at 15773.

¹⁶² See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶³ See CAT NMS Plan Approval Order.

¹⁵⁶ *Id.*

¹⁵⁷ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include 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.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is 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.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and

development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple,

Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶⁴

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁵ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁶ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private

network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁷

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels

¹⁶⁴ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁵ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁶ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁷ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁸

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent

analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁹ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁷⁰

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of

the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷¹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall

¹⁶⁸ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁹ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁷⁰ Strategic Cloud Assessment Article.

¹⁷¹ *Id.*

include . . . legal costs.”¹⁷² In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷³ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷⁴ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-

effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁵

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would

remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁶ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁷ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁸

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁹ If the CAT Funding Model had existed on Day 1, the risk of

¹⁷⁶ CAT NMS Plan Approval Order at 84737.

¹⁷⁷ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁸ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁹ CAT Funding Model Approval Order at 62650.

¹⁷² Section 11.1(a)(i) of the CAT NMS Plan.

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

¹⁷⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

¹⁷⁵ Settlement Exemptive Order at 77129–30.

any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁸⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of

LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸² As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸³ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸⁴
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁵

¹⁸² See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸³ *Id.* at 23078–79, n.70.

¹⁸⁴ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁶
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁷

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and

¹⁸⁶ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁷ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁸ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁹

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁹⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹¹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were

limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹² In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter

Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹³ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹⁴ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁵

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS

¹⁹³ See, e.g., NASDAQ Equities Rule 4626.

¹⁹⁴ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁵ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁸⁸ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁹ CAT NMS Plan Approval Order at 84917–18.

¹⁹⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁶ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁷ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying

trades provided by CAT with CAT invoices, which would facilitate firms’ ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a “reconciliation” and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm’s internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm’s internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms’ Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm’s internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for

similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters’ ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁸ to CAT Reporters in the trade billing details provided with their CAT invoices (“Additional Trade Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁹ By providing

¹⁹⁸ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁹ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee

Continued

¹⁹⁶ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁷ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship

between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.²⁰⁰ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does

not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰¹ (2) trade details schemas;²⁰² and (3) CAT billing scenarios.²⁰³

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰⁴ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁵ 485

²⁰¹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰² Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰³ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰⁴ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁵ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

²⁰⁰ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

participants and 394 participants attended the two webinars, respectively.

- *CAT Alert*. CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁶

- *Frequently Asked Questions (FAQs)*. CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁷

- *Mock Invoices*. To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance*. CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing

process through the FCAT Help Desk.²⁰⁸ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁹ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

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,²¹⁰ 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,²¹¹ 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,²¹² 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.²¹³ 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."²¹⁴ 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 paid by the CEBBs and CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT,

²⁰⁶ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁷ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁸ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁹ Securities Exchange Act Release No. 34-99364 (January 17, 2024), 89 FR 10887 (February 13, 2024) (SR-CBOE-2024-003).

²¹⁰ 15 U.S.C. 78f(b)(6).

²¹¹ 15 U.S.C. 78f(b)(4).

²¹² 15 U.S.C. 78f(b)(8).

²¹³ See Section 6(b)(1) of the Exchange Act.

²¹⁴ CAT NMS Plan Approval Order at 84697.

where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 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."²¹⁵ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁶ 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 Historical CAT Assessment 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 Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁷ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments 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 Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

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

a brief description of the amount and type of the Historical CAT Costs, 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.

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

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 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 costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁸ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume 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

²¹⁵ CAT NMS Plan Approval Order at 84696.

²¹⁶ CAT Funding Model Approval Order at 62686.

²¹⁷ *Id.* at 62662–63.

²¹⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

and market rates for similar services.²¹⁹ 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 day²²⁰ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²¹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²²

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 an amendment 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.²²³

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²⁴ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees 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.²²⁵ 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.²²⁶ The services performed by FCAT for each period and the costs related to such services are described above.²²⁷

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁸ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees 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 FCAT-negotiated fees for Kingland'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, were reasonable and appropriate.²²⁹ The services performed by Kingland for each period and the costs for each period are described above.²³⁰

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³¹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is

²¹⁹ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²⁰ Appendix D-4 of the CAT NMS Plan at n.262.

²²¹ CAT NMS Plan Approval Order at 84801.

²²² See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²³ 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).

²²⁴ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁵ See Section 3(a)(2)(B)(i)(b) above.

²²⁶ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁷ *Id.*

²²⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁹ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²³⁰ *Id.*

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

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 determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³² As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³³ Capitalized developed technology costs include costs related to 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 costs for each period are described in more detail above.²³⁴ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁵ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement

with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁶ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁷

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁹

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²⁴⁰ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴¹ and

because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴² CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴³ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴⁴ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁵

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁶ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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."²⁴⁷ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁸ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁹

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and

²⁴² 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.

²⁴³ See Section 3(a)(2)(B)(i)(g) above.

²⁴⁴ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁵ *Id.*

²⁴⁶ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁷ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁸ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁹ *Id.*

²³² See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁴ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁵ *Id.*

²³⁶ See Section 3(a)(2)(B)(i)(e) above.

²³⁷ See Section 3(a)(2)(B)(i)(b) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁹ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²⁴⁰ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴¹ 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).

administration costs as a part of Historical CAT Assessments.²⁵⁰ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵¹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵² Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵³

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵⁴ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁵ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant

Thornton and the costs related to such services are described above.²⁵⁶

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁷

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁸

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁹ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were 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.²⁶⁰ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶¹ Moreover, CAT LLC determined that the rates charged for

such services were in line with market rates.²⁶² As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

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

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. 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 will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶³ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. 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, the executed equivalent share volume for 2022 was

²⁵⁰ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵¹ See Section 3(a)(2)(B)(i)(i) above.

²⁵² See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵³ *Id.*

²⁵⁴ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁵ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁶ *Id.*

²⁵⁷ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁸ *Id.*

²⁵⁹ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁶⁰ See Section 3(a)(2)(B)(i)(j) above.

²⁶¹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶² *Id.*

²⁶³ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶⁴

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁵ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 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.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),²⁶⁶ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁷ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all

Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 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 Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁸ In approving the CAT Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁹ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 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) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 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 Historical CAT Assessments 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. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, 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 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 Act²⁷⁰ 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

²⁶⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁵ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁶ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁷ *Id.*

²⁶⁸ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁹ CAT Funding Model Approval Order at 62629.

²⁷⁰ 15 U.S.C. 78f(b)(8).

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 Historical CAT Assessment 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 Historical CAT Assessment 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.²⁷¹ 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. Historical CAT Assessment 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 Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is

reasonable. Therefore, Historical CAT Assessment 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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷² and Rule 19b-4(f)(2) thereunder,²⁷³ 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-CBOE-2024-038 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-2024-038. 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-2024-038 and should be submitted on or before October 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2024-20463 Filed 9-10-24; 8:45 am]

BILLING CODE 8011-01-P

²⁷¹ CAT Funding Model Approval Order at 62676-86.

²⁷² 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷³ 17 CFR 240.19b-4(f)(2).

²⁷⁴ 17 CFR 200.30-3(a)(12).



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Part IV

Securities and Exchange Commission

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100940; File No. SR–CboeBZX–2024–078]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 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 22, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “Cboe BZX”) 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

Cboe Exchange, Inc. (the “Exchange” or “Cboe BZX”) proposes to amend its fee schedule entitled “Consolidated Audit Trail Funding Fees”³ to establish fees for Industry Members⁴ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁵ and referred to as Historical CAT Assessment 1. The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT

Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. 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://markets.cboe.com/us/equities/regulation/rule_filings/BZX/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

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.⁶ On November 15, 2016, the Commission approved the CAT NMS Plan.⁷ 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.⁸ 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.⁹

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 (“Prospective CAT Costs” fees).¹⁰

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹¹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹²

⁹ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

¹⁰ 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 only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹¹ Section 11.3(b) of the CAT NMS Plan.

¹² In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange and each of its affiliated exchanges (Cboe BYX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.) are filing to adopt the same amendment to this fee schedule.

⁴ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Exchange Rule 7.20(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 Chapter 7, Section B of the Exchange’s Rulebook.

⁵ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁶ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁷ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁸ Section 11.1(b) of the CAT NMS Plan.

Each Historical CAT Assessment to be paid by CEBBs and CEBs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹³ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, 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.'" ¹⁴ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁵ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁶

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁷ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁸ 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.¹⁹

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)²⁰

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)²¹

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

via the Historical CAT Assessment is reasonable." CAT Funding Model Approval Order at 62662.

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

¹⁴ Section 11.1(b) of the CAT NMS Plan.

¹⁵ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁶ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁷ Securities Exchange Act Release No. 99369 (January 17, 2024), 89 FR 10392 (February 13, 2024) (SR-CboeBZX-2024-004).

¹⁸ 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.

¹⁹ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs 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.

²⁰ 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").

²¹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

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)²²

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 Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, 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 shall be counted as 0.01 executed equivalent share.²³

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²⁴ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, 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.”²⁵ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

²² See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²³ Section 11.3(a)(i)(B) and 11.3(b)(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.

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

²⁵ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs:	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁶

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and

capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost 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. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁷ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as

"CAT LLC"),²⁸ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁹

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS 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 the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided 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[.]

²⁶ 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.

²⁷ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁸ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁹ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

process and load more than 58 billion records per day,”³⁰ and that “[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.”³¹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these

predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³² Phase 2a and Phase 2b Industry Member Data³³ (including certain linkages), as well as SIP Data,³⁴ reference data and other types of Other

Data.³⁵ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁶

	Date range: 3/29/19 to 4/12/20*	Date range: 4/13/20 to 6/21/20**
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. 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.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁷ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the

following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA’s specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA’s detailed proposal in response to CATLLC’s recent inquiries; and

d. FINRA’s data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁸

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁹ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

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. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor’s activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated (“Exegy”), a market data provider;⁴⁰

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after

³⁰ Appendix D–4 of the CAT NMS Plan at n.262.

³¹ Appendix D–5 of the CAT NMS Plan.

³² See Section 6.3(d) of the CAT NMS Plan.

³³ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) (“Phased Reporting Exemptive Relief Order”) for a description of Phase 2a and Phase 2b Industry Member Data.

³⁴ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁵ See Appendix C–108 of the CAT NMS Plan.

³⁶ Note that the volume data described in this table does not include CAIS data.

³⁷ The term “Bidder” is defined in Section 1.1 of the CAT NMS Plan.

³⁸ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields,

Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketregrule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁹ *Id.*

⁴⁰ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;
- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;
- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴¹ and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). 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.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland'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. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴² Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴³

(d) Technology Costs—Change Request Fees

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 change 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. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴⁴

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁵ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

⁴⁴ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴¹ The CAT website is <https://www.catnmsplan.com>.

⁴² For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴³ Phased Reporting Exemptive Relief Order at 23079–80.

Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services

provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

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. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;

- Assisted with the RFP and bidding process for the CAT Plan Processor;

- Analyzed legal matters related to the Development Advisory Group ("DAG");

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;

- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;

- Provided assistance with compliance with Regulation SCI;

- Assisted with clock synchronization study;

- Provided assistance with respect to the establishment of CAT security;

- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided advice regarding CAT policies and procedures;

- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and

- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, 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.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. 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.

To help facilitate project management given the unprecedented complexity

and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [sic] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided 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;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security

liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

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.⁴⁶ The professional and administration costs 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. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁷ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications

⁴⁶ Section 9.2 of the CAT NMS Plan.

⁴⁷ See Section 6.5(a)(ii) of the CAT NMS Plan.

services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided 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 were 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.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁸ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs:	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees.	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁹

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities

transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁵⁰ CAT LLC completed the requirements of FAM

Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

⁴⁸ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁹ As discussed above, 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.

⁵⁰ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 1 Period. Accordingly, the \$2,642,122 in

technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of

the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵¹

		Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:		
Participant—Equities		6
Participant—Options		103
Industry Member—Equities		7
Industry Member—Options		0.31
SIP—Options & Equities		74
Average Total Daily Volume		185
Cumulative Total Events for the Period		5,190
Total Compute Hours for the Period		2,612,082
Storage Footprint at End of Period (Petabytes)		57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

- Administered the CAT website and all of its content; and
 - Provided 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.
- (c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland

continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such

⁵¹ Note that the volume data described in this table does not include CAIS data.

costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵² which

covers the period from August 1, 2020—December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
Technology Costs:	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	\$51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵³

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵⁴

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁵

⁵² Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵³ As discussed above, 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.

⁵⁴ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵⁵ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the

CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public

relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁶ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs:	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁷

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁸

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage

⁵⁶ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁷ As discussed above, 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.

⁵⁸ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

footprint of the CAT during FAM Period 3.⁵⁹

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT

Alerts, meetings, presentations and webinars;

- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the

following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington &

⁵⁹ Note that the volume data described in this table does not include CAIS data.

Burling LLP (“Covington”) during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC’s proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC’s exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC’s April 6, 2021 order instituting proceedings,⁶⁰ and assessed legal matters regarding the SEC’s October 29, 2021 order denying the proposed Plan amendment.⁶¹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶² CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with

respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC’s disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT’s response to the SEC’s disapproval order. This work accounted for a minority of Covington’s fees in 2021.⁶³

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte’s CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors’ and officers’ liability insurance, and errors

⁶⁰ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶¹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶² See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the “2020 Orders”).

⁶³ As discussed above with regard to Pillsbury’s work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC’s efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the

accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15,

2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶⁴

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁴ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs:	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g.,

Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided 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).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs

paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁵ which was the date by which Participants were required to begin reporting to the CAT.⁶⁶ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁷ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁸ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery

⁶⁵ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁶ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁷ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁸ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁹ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁷⁰ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷¹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. 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 Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months." ⁷² 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.⁷³

The total executed equivalent share volume of transactions in Eligible

⁶⁹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁷⁰ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷¹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷² Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷³ CAT Funding Model Approval Order at 62664.

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 the 24 months of Historical Recovery Period 1 by doubling 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷⁴

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 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 Historical CAT Assessment.⁷⁵

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁶ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate

in a fee filing for a Historical CAT Assessment.⁷⁷

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁸

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁹

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁸⁰ A CEBB 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.⁸¹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

⁷⁷ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁸ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁹ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBSs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁸⁰ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸¹ See proposed paragraph (a)(1)(B) of the fee schedule.

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸² Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸³

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a 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 Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸⁴

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each

⁸² Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸³ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸⁴ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁵ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁶ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 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 \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

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

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁵ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁶ 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)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth

in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 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)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1.

Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 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 \$0.000013 per executed equivalent share."

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that "Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time." This proposed paragraph would further state that "Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect."

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical

CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that "[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b)."

(B) Manner of Payment

Paragraph (b)(1) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states 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." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁷ The Plan Processor has established a billing system for CAT fees.⁸⁸ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(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;

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸⁸ 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.

⁸⁵ CAT Funding Model Approval Order at 62658, n.658.

⁸⁶ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

or (b) the maximum rate permitted by applicable law.⁸⁹

Accordingly, the Exchange previously has added this requirement to the Exchange's fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

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 Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each 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.⁹⁰

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹¹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, 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 on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹² 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 Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 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 Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) 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 Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹³ The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹⁴ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹⁵ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

⁸⁹ Section 11.4 of the CAT NMS Plan.

⁹⁰ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹¹ 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.

⁹² 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.

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

⁹⁴ Section 11.6(b) of the CAT NMS Plan.

⁹⁵ Section 11.6 of the CAT NMS Plan.

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.⁹⁶ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁷ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁸

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 "is consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Equities 2a file submission and data integrity validations.'"⁹⁹ 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.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that "Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)" was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of "equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information" was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is "consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Options 2b file submission and data integrity validations.'"¹⁰¹ 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.

⁹⁶ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁸ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these 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.

⁹⁹ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) ("FAM Adopting Release").

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰¹ FAM Adopting Release at 31330, n.98.

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.¹⁰²

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order

cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. 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 fourth quarter of 2020,¹⁰³ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰⁴ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁵
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

¹⁰³ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁴ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁵ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁶ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and

¹⁰⁶ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁸ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰² Phased Reporting Exemptive Relief Order at 23078.

CEBSs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. 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 fourth quarter of 2021,¹⁰⁹ Full Availability and Regulatory Utilization of Transactional Database

Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹¹⁰ FINRA retired OATS effective September 1, 2021.¹¹¹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. 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 orders(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.¹¹²

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.¹¹³

¹¹⁰ *Id.*

¹¹¹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹² Phase Reporting Exemptive Relief Order at 23078–79.

¹¹³ *Id.* at 23079.

¹⁰⁹ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

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.¹¹⁴

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 will include 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).¹¹⁵

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁶ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c

and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁷

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, 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, 2021.¹¹⁸

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁹

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹²⁰

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for

¹¹⁷ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹²⁰ Settlement Exemptive Order at 77129 n.13.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 23079–80.

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain *[sic]* two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²¹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not

considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²²

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²³ Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²⁴

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁵ The Commission, however,

did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁶

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁷ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁸ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s

¹²¹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²² See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²³ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²⁴ *Id.*

¹²⁵ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁶ *Id.* at n.11.

¹²⁷ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁸ *Id.* at 10.

November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁹ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹³⁰ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³¹

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.”¹³² The November 2023 Exemption Order is consistent with the Commission’s repeated statements in

the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³³ Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³⁴

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁵ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the

Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁶ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5

¹³⁶ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹²⁹ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹³⁰ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³¹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³² *Id.* at 77129 n.12.

¹³³ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³⁴ Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³⁵ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁷

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁸

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the

NMS plan.¹³⁹ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹⁴⁰

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴¹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴²

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴³ As the SEC described in its

approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')." ¹⁴⁴ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁵

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁶ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁷ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁸

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to

¹³⁷ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁸ See detailed discussion of RFP questions in Appendix C of the CAT NMS Plan, and incorporation of RFP requirements in Appendix D at D-2.

¹³⁹ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹⁴⁰ Rule 613 Adopting Release at 45738–39.

¹⁴¹ Rule 613 Adopting Release at 45739.

¹⁴² Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 11153.

¹⁴⁵ *Id.* at 11159.

¹⁴⁶ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁷ See Selection Plan Approval Order.

¹⁴⁸ Selection Plan Approval Order at 11160.

allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan

Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁹

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁵⁰

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some

provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵¹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵² The Participants filed two supplements to the request for exemptive relief.¹⁵³

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵⁴ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁵

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or

¹⁵¹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵² Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵³ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵⁴ See 2016 Exemptive Order.

¹⁵⁵ *Id.* at 11857.

¹⁴⁹ See CAT NMS Plan Approval Order at 84737.

¹⁵⁰ See Section D(11) of Appendix C of the CAT NMS Plan.

otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (*e.g.*, lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁶

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁷

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted

two extensions of this deadline.¹⁵⁸ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁹ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁶⁰ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶¹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶² Following the comment period, the SEC approved the Plan in November 2016.¹⁶³

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for

WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement.

¹⁵⁸ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁹ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁶⁰ March 2013 Exemptive Order at 15772.

¹⁶¹ *Id.* at 15773.

¹⁶² See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶³ See CAT NMS Plan Approval Order.

¹⁵⁶ *Id.*

¹⁵⁷ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include 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.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is 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.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and

development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple,

Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶⁴

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁵ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁶ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private

network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁷

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels

¹⁶⁴ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁵ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁶ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁷ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁸

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent

analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁹ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁷⁰

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of

the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷¹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall

¹⁶⁸ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁹ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁷⁰ Strategic Cloud Assessment Article.

¹⁷¹ *Id.*

include . . . legal costs.”¹⁷² In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷³ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷⁴ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-

effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁵

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would

remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁶ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁷ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁸

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁹ If the CAT Funding Model had existed on Day 1, the risk of

¹⁷⁶ CAT NMS Plan Approval Order at 84737.

¹⁷⁷ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁸ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁹ CAT Funding Model Approval Order at 62650.

¹⁷² Section 11.1(a)(i) of the CAT NMS Plan.

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

¹⁷⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁵ Settlement Exemptive Order at 77129–30.

any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁸⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of

LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸² As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸³ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸⁴
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁵

¹⁸² See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸³ *Id.* at 23078–79, n.70.

¹⁸⁴ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁶
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁷

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and

¹⁸⁶ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁷ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁸ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁹

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁹⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹¹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were

limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹² In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter

Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹³ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹⁴ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁵

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS

¹⁹³ See, e.g., NASDAQ Equities Rule 4626.

¹⁹⁴ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁵ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁸⁸ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁹ CAT NMS Plan Approval Order at 84917–18.

¹⁹⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁶ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁷ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying

trades provided by CAT with CAT invoices, which would facilitate firms’ ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a “reconciliation” and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm’s internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm’s internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms’ Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm’s internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for

similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters’ ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁸ to CAT Reporters in the trade billing details provided with their CAT invoices (“Additional Trade Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁹ By providing

¹⁹⁸ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁹ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee

Continued

¹⁹⁶ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁷ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship

between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.²⁰⁰ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does

not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰¹ (2) trade details schemas;²⁰² and (3) CAT billing scenarios.²⁰³

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰⁴ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁵ 485

²⁰¹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰² Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰³ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰⁴ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁵ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

²⁰⁰ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

participants and 394 participants attended the two webinars, respectively.

- *CAT Alert*. CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁶

- *Frequently Asked Questions (FAQs)*. CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁷

- *Mock Invoices*. To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance*. CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing

process through the FCAT Help Desk.²⁰⁸ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁹ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

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,²¹⁰ 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,²¹¹ 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,²¹² 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.²¹³ 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."²¹⁴ 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 paid by the CEBBs and CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the costs of establishing and maintaining the CAT,

²⁰⁶ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁷ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁸ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in Appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of Appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁹ Securities Exchange Act Release No. 99369 (January 17, 2024), 89 FR 10392 (February 13, 2024) (SR-CboeBZX-2024-004).

²¹⁰ 15 U.S.C. 78f(b)(6).

²¹¹ 15 U.S.C. 78f(b)(4).

²¹² 15 U.S.C. 78f(b)(8).

²¹³ See Section 6(b)(1) of the Exchange Act.

²¹⁴ CAT NMS Plan Approval Order at 84697.

where such costs include Plan Processor costs and costs related to technology, legal, consulting, insurance, professional and administration, and public relations costs. The Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 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."²¹⁵ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁶ 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 Historical CAT Assessment 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 Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁷ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments 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 Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

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

a brief description of the amount and type of the Historical CAT Costs, 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.

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

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 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 costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁸ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume 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

²¹⁵ CAT NMS Plan Approval Order at 84696.

²¹⁶ CAT Funding Model Approval Order at 62686.

²¹⁷ *Id.* at 62662–63.

²¹⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

and market rates for similar services.²¹⁹ 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 day²²⁰ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²¹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²²

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 an amendment 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.²²³

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²⁴ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees 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.²²⁵ 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.²²⁶ The services performed by FCAT for each period and the costs related to such services are described above.²²⁷

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁸ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees 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 FCAT-negotiated fees for Kingland'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, were reasonable and appropriate.²²⁹ The services performed by Kingland for each period and the costs for each period are described above.²³⁰

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³¹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change request process to address evolving needs in technology projects. This is

²¹⁹ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²⁰ Appendix D-4 of the CAT NMS Plan at n.262.

²²¹ CAT NMS Plan Approval Order at 84801.

²²² See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²³ 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).

²²⁴ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁵ See Section 3(a)(2)(B)(i)(b) above.

²²⁶ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁷ *Id.*

²²⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁹ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²³⁰ *Id.*

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

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 determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³² As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³³ Capitalized developed technology costs include costs related to 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 costs for each period are described in more detail above.²³⁴ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁵ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement

with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁶ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁷

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁹

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²⁴⁰ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴¹ and

because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴² CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴³ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴⁴ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁵

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁶ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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."²⁴⁷ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁸ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁹

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and

²⁴² 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.

²⁴³ See Section 3(a)(2)(B)(i)(g) above.

²⁴⁴ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁵ *Id.*

²⁴⁶ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁷ Section 4.1.5 of Appendix D of the CAT NMS Plan.

²⁴⁸ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁹ *Id.*

²³² See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁴ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁵ *Id.*

²³⁶ See Section 3(a)(2)(B)(i)(e) above.

²³⁷ See Section 3(a)(2)(B)(i)(b) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁹ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²⁴⁰ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴¹ 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).

administration costs as a part of Historical CAT Assessments.²⁵⁰ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵¹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵² Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵³

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵⁴ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁵ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant

Thornton and the costs related to such services are described above.²⁵⁶

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁷

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁸

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁹ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were 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.²⁶⁰ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶¹ Moreover, CAT LLC determined that the rates charged for

such services were in line with market rates.²⁶² As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

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

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. 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 will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶³ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. 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, the executed equivalent share volume for 2022 was

²⁵⁰ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵¹ See Section 3(a)(2)(B)(i)(i) above.

²⁵² See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵³ *Id.*

²⁵⁴ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁵ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁶ *Id.*

²⁵⁷ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁸ *Id.*

²⁵⁹ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁶⁰ See Section 3(a)(2)(B)(i)(j) above.

²⁶¹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶² *Id.*

²⁶³ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶⁴

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁵ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 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.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁶ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁷ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all

Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 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 Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁸ In approving the CAT Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁹ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 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) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 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 Historical CAT Assessments 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. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, 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 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 Act²⁷⁰ 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

²⁶⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁵ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁶ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁷ *Id.*

²⁶⁸ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁹ CAT Funding Model Approval Order at 62629.

²⁷⁰ 15 U.S.C. 78f(b)(8).

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 Historical CAT Assessment 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 Historical CAT Assessment 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.²⁷¹ 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. Historical CAT Assessment 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 Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is

reasonable. Therefore, Historical CAT Assessment 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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷² and Rule 19b-4(f)(2) thereunder,²⁷³ 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-CboeBZX-2024-078 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-CboeBZX-2024-078. 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-CboeBZX-2024-078 and should be submitted on or before October 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷⁴

Sherry R. Haywood,
Assistant Secretary.

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²⁷¹ CAT Funding Model Approval Order at 62676-86.

²⁷² 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷³ 17 CFR 240.19b-4(f)(2).

²⁷⁴ 17 CFR 200.30-3(a)(12).



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Part V

Securities and Exchange Commission

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100939; File No. SR–CboeBYX–2024–031]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 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 22, 2024, Cboe BYX Exchange, Inc. (the “Exchange” or “Cboe BYX”) 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

Cboe BYX Exchange, Inc. (the “Exchange” or “Cboe BYX”) proposes to amend its fee schedule entitled “Consolidated Audit Trail Funding Fees”³ to establish fees for Industry Members⁴ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”)⁵ and referred to as Historical CAT Assessment 1. The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly

invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024. 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://markets.cboe.com/us/equities/regulation/rule_filings/BYX/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

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.⁶ On November 15, 2016, the Commission approved the CAT NMS Plan.⁷ 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.⁸ 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.⁹

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 (“Prospective CAT Costs” fees).¹⁰

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”¹¹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹²

⁹ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

¹⁰ 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 only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹¹ Section 11.3(b) of the CAT NMS Plan.

¹² In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The Exchange and each of its affiliated exchanges (Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.) are filing to adopt the same amendment to this fee schedule.

⁴ An “Industry Member” is defined as “a member of a national securities exchange or a member of a national securities association.” See Exchange Rule 7.20(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 Chapter 7, Section B of the Exchange’s Rulebook.

⁵ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁶ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁷ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁸ Section 11.1(b) of the CAT NMS Plan.

Each Historical CAT Assessment to be paid by CEBBs and CEBs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹³ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, 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.'" ¹⁴ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁵ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁶

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁷ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁸ 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.¹⁹

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)²⁰

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)²¹

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

via the Historical CAT Assessment is reasonable." CAT Funding Model Approval Order at 62662.

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

¹⁴ Section 11.1(b) of the CAT NMS Plan.

¹⁵ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁶ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁷ Securities Exchange Act Release No. 99371 (January 17, 2024), 89 FR 10963 (February 13, 2024) (SR-CboeBYX-2024-002).

¹⁸ 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.

¹⁹ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs 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.

²⁰ 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").

²¹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

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)²²

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 Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBSSs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, 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 shall be counted as 0.01 executed equivalent share.²³

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²⁴ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBSSs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, 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.”²⁵ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBSSs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

²² See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²³ Section 11.3(a)(i)(B) and 11.3(b)(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.

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

²⁵ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs ¹ for Pre-FAM Period (prior to June 22, 2020)*
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁶

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and

capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost 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. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁷ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as

"CAT LLC"),²⁸ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁹

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS 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 the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided 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[.]

²⁶ 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.

²⁷ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁸ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁹ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

process and load more than 58 billion records per day,”³⁰ and that “[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data.”³¹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these

predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,³² Phase 2a and Phase 2b Industry Member Data³³ (including certain linkages), as well as SIP Data,³⁴ reference data and other types of Other

Data.³⁵ The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁶

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. 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.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁷ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the

following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA’s specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA’s detailed proposal in response to CATLLC’s recent inquiries; and

d. FINRA’s data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁸

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁹ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

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. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor’s activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated (“Exegy”), a market data provider;⁴⁰
- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated testing for Phase 2a and 2b reporting for Industry Members;
- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁹ *Id.*

⁴⁰ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

³⁰ Appendix D–4 of the CAT NMS Plan at n.262.

³¹ Appendix D–5 of the CAT NMS Plan.

³² See Section 6.3(d) of the CAT NMS Plan.

³³ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) (“Phased Reporting Exemptive Relief Order”) for a description of Phase 2a and Phase 2b Industry Member Data.

³⁴ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁵ See appendix C–108 of the CAT NMS Plan.

³⁶ Note that the volume data described in this table does not include CAIS data.

³⁷ The term “Bidder” is defined in Section 1.1 of the CAT NMS Plan.

³⁸ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields,

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;
- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;
- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴¹ and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). 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.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a

subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland'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. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴² Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴³

(d) Technology Costs—Change Request Fees

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 change 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. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA

and SIP data feeds, and the reprocessing of certain exchange data.⁴⁴

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁵ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT,

⁴⁴ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁴¹ The CAT website is <https://www.catnmsplan.com>.

⁴² For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴³ Phased Reporting Exemptive Relief Order at 23079–80.

but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage

external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

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. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of

exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to

address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, 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.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. 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.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans

submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;
- Provided 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;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

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.⁴⁶ The professional and administration costs 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. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services

⁴⁶ Section 9.2 of the CAT NMS Plan.

were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's

financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁷ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with

industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment was paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided 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 were 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.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise

⁴⁷ See Section 6.5(a)(ii) of the CAT NMS Plan.

and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of

services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already

funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁸ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁹

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁵⁰ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS

continued to provide 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, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time

necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵¹

⁴⁸ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁹ As discussed above, 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.

⁵⁰ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

⁵¹ Note that the volume data described in this table does not include CAIS data.

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates

for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types

of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵² which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
Technology Costs	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298

⁵² Section 11.6(a)(i)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵³

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵⁴

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020. The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2.

The fee arrangement for AWS described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁵

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in

technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-

FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical

⁵³ As discussed above, 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.

⁵⁴ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵⁵ Note that the volume data described in this table does not include CAIS data.

Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related

to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak

Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁶ which covers the period from January 1, 2021—December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FA Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209

⁵⁶ Section 11.6(a)(i)(C) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FA Period 3 *
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁷

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁸

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁹

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT

continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091

in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan

⁵⁷ As discussed above, 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.

⁵⁸ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁹ Note that the volume data described in this table does not include CAIS data.

Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the

legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding

applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC's April 6, 2021 order instituting proceedings,⁶⁰ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁶¹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶² CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶³

⁶⁰ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶¹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶² See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶³ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak

Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶⁴

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related

to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs: .....	.....
Cloud Hosting Services .....	.....
Operating Fees .....	.....
CAIS Operating Fees .....	.....
Change Request Fees .....	.....
Legal	6,143,278
Consulting	4,452,106
Insurance .....	.....
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as

defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

⁶⁴ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);
- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [sic] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided 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).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁵ which was the date by which Participants were required to begin reporting to the CAT.⁶⁶ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan

⁶⁵ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁶ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁷ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁸ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁹ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁷⁰ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷¹

⁶⁷ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁸ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that “[i]n the Commission’s view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years.” CAT Funding Model Approval Order at 62664.

⁶⁹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁷⁰ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷¹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. 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 Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months.”⁷² 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.⁷³

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 the 24 months of Historical Recovery Period 1 by doubling 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷⁴

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1 and a description of the calculation of the projection is provided in this filing in accordance with the requirement in the

⁷² Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷³ CAT Funding Model Approval Order at 62664.

⁷⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁵

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁶ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁷

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants’ one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁸

The CAT NMS Plan further states that “Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs.”⁷⁹

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT

⁷⁵ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁶ In approving the CAT Funding Model, the Commission stated that “[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable.” CAT Funding Model Approval Order at 62664.

⁷⁷ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁸ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁹ *Id.* In approving the CAT Funding Model, the Commission stated that “[t]he proposed allocation of the Historical CAT Assessment solely to CEBs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds,” as the Participants’ one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁸⁰ A CEBB 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.⁸¹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸² Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸³

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

⁸⁰ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸¹ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸² Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸³ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a 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 Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸⁴

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 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 \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

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

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁵ Accordingly, proposed paragraph

(a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁶ 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)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 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)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 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

⁸⁴ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁵ CAT Funding Model Approval Order at 62658, n.658.

⁸⁶ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states 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.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁷ The Plan Processor has established a billing system for CAT fees.⁸⁸ Therefore, the

Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(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.⁸⁹

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

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 Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker’s Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each 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.⁹⁰

Such information would provide CEBBs and CEBs with the ability to

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.

⁸⁹ Section 11.4 of the CAT NMS Plan.

⁹⁰ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

understand the details regarding the calculation of their Historical CAT Assessment.⁹¹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, “[f]or each Historical CAT Assessment, 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 on an exchange, and (3) by buy-side transactions and sell-side transactions.”⁹² 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 Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 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 Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock

⁹¹ 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.

⁹² 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.

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸⁸ The billing process and system are described in CAT Alert 2023-02 as well as the CAT FAQs

invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) 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 Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.”⁹³ The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.”⁹⁴ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to “all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section

11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved”⁹⁵ (“Post-Amendment Expenses”) incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines “Initial Industry Member Core Equity and Options Reporting” as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

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.⁹⁶ As indicated by the Participants’ Quarterly Progress Report for the third quarter of 2020,⁹⁷ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants’ Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁸

⁹⁵ Section 11.6 of the CAT NMS Plan.

⁹⁶ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁸ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁹ 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;

the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these 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.

⁹⁹ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

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

⁹⁴ Section 11.6(b) of the CAT NMS Plan.

- 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.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b file submission and data integrity validations.’”¹⁰¹ 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.¹⁰²

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. 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 fourth quarter of 2020,¹⁰³ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰⁴ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

¹⁰³ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁴ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰¹ FAM Adopting Release at 31330, n.98.

¹⁰² Phased Reporting Exemptive Relief Order at 23078.

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁵
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁶ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees,

costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. 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 fourth quarter of 2021,¹⁰⁹ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹¹⁰ FINRA retired OATS effective September 1, 2021.¹¹¹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. 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

¹⁰⁵ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

¹⁰⁶ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁷ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁸ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰⁹ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁰ *Id.*

¹¹¹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

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 orders(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.¹¹²

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.¹¹³

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.¹¹⁴

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 will include 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).¹¹⁵

The Quarterly Progress Report for the fourth quarter of 2021 states that “Phase 2a was fully implemented as of October 26, 2020;” “Phase 2b was fully implemented as of January 4, 2021;” “Phase 2c was implemented as of April 26, 2021;” and “Phase 2d was fully implemented as of December 13, 2021.”¹¹⁶ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- “Production Go-Live for Equities 2c reporting requirements (Large Industry Members)” was completed on April 26, 2021;
- “LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)” was completed on April 26, 2021;
- “FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)” was completed on December 13, 2021;
- “Production Go-Live for Options 2d reporting requirements (Large Industry Members)” was completed on December 13, 2021;
- “Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)” was completed on December 13, 2021;
- “Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)” was completed on December 13, 2021;
- “Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)” was completed on December 13, 2021;
- “LTID Account Information Reporting Go-Live for Phases 2d (Large Industry

¹¹² Phase Reporting Exemptive Relief Order at 23078–79.

¹¹³ *Id.* at 23079.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 23079–80.

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

Members)” was completed on December 13, 2021; and

- “LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)” was completed on December 13, 2021.¹¹⁷

The third prong of “Full Availability and Regulatory Utilization of Transactional Database Functionality” also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, 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, 2021.¹¹⁸

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to “develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository.” The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁹

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹²⁰

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBSS paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²¹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether

trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²²

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²³ Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²⁴

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the

¹¹⁷ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹²⁰ Settlement Exemptive Order at 77129 n.13.

¹²¹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²² See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²³ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²⁴ *Id.*

extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²⁵ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁶

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁷ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁸ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May

19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁹ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹³⁰ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³¹

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any

applicable Financial Accountability Milestones.”¹³² The November 2023 Exemption Order is consistent with the Commission’s repeated statements in the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³³ Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³⁴

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁵ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date

¹³² *Id.* at 77129 n.12.

¹³³ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³⁴ Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³⁵ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹²⁵ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁶ *Id.* at n.11.

¹²⁷ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁸ *Id.* at 10.

¹²⁹ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹³⁰ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³¹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁶ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of

Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC’s adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁷

(i) Request for Proposal (“RFP”)

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁸

¹³⁷ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC’s website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁸ See detailed discussion of RFP questions in appendix C of the CAT NMS Plan, and incorporation of RFP requirements in appendix D at D–2.

In the context of the SEC’s adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁹ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information (“RFI”) process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process “to determine the best technical solution for developing a consolidated audit trail.” FIF suggested that the Commission “should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group.” Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission’s initial cost estimates and to determine the best approach to the consolidated audit trail.¹⁴⁰

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴¹ As the SEC noted, “[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal (‘RFP’) was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan.”¹⁴²

The SEC specifically recognized that the Participants planned to use an RFP

¹³⁹ For example, in its comments on proposed Rule 613, FIF suggested “that the SROs should select the processor through a ‘request for proposal.’” Rule 613 Adopting Release at 45785.

¹⁴⁰ Rule 613 Adopting Release at 45738–39.

¹⁴¹ Rule 613 Adopting Release at 45739.

¹⁴² Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) (“Selection Plan Approval Order”).

¹³⁶ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴³ As the SEC described in its approval order for the Selection Plan, “[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP (‘Bids’)—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail (‘Plan Processor’).”¹⁴⁴ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it “believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail.”¹⁴⁵

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders’ questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the “Selection Plan”).¹⁴⁶ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁷ In approving the Selection Plan, the Commission concluded that “it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor.”¹⁴⁸

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the

Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan

Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁹

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁵⁰

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 11153

¹⁴⁵ *Id.* at 11159.

¹⁴⁶ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁷ See Selection Plan Approval Order.

¹⁴⁸ Selection Plan Approval Order at 11160.

¹⁴⁹ See CAT NMS Plan Approval Order at 84737.

¹⁵⁰ See Section D(11) of appendix C of the CAT NMS Plan.

DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵¹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵² The Participants filed two supplements to the request for exemptive relief.¹⁵³

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵⁴ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁵

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient

and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁶

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁷

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional

evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁸ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁹ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁶⁰ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶¹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶² Following the comment period, the SEC approved the Plan in November 2016.¹⁶³

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services

¹⁵¹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵² Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵³ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵⁴ See 2016 Exemptive Order.

¹⁵⁵ *Id.* at 11857.

¹⁵⁶ *Id.*

¹⁵⁷ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁸ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁹ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁶⁰ March 2013 Exemptive Order at 15772.

¹⁶¹ *Id.* at 15773.

¹⁶² See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶³ See CAT NMS Plan Approval Order.

were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT's status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-

formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include 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.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is 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.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far

exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of

the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶⁴

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations

may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁵ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁶ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost

¹⁶⁴ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁵ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁶ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

required to build hundreds of redundant systems.¹⁶⁷

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁸

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Theysys, it utilized certain aspects of the technical specifications created by Theysys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields

than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁹ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁷⁰
- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory

importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.
- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁷¹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan

¹⁶⁷ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁸ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁹ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁷⁰ Strategic Cloud Assessment Article.

¹⁷¹ *Id.*

describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷² In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷³ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷⁴ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁵

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁶ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on

¹⁷² Section 11.1(a)(i) of the CAT NMS Plan.

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

¹⁷⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁵ Settlement Exemptive Order at 77129–30.

¹⁷⁶ CAT NMS Plan Approval Order at 84737.

January 17, 2017.¹⁷⁷ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁸

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁹ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁸⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating

fees.”¹⁸¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸² As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸³ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸⁴
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.

- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.

- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.

- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.

- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁵

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁶
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁷

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT

¹⁷⁷ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁸ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁹ CAT Funding Model Approval Order at 62650.

¹⁸⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸² See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸³ *Id.* at 23078–79, n.70.

¹⁸⁴ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁶ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁷ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁸ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁹

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs

for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁹⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹¹ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹² In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own,

have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹³ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹⁴ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁵

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

¹⁸⁸ See, e.g., NASDAQ Equities Rule 4626.

¹⁹⁴ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹⁵ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁸⁸ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁹ CAT NMS Plan Approval Order at 84917–18.

¹⁹⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant's alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . consulting . . ." costs.¹⁹⁶ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . consulting"¹⁹⁷ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁸ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they

¹⁹⁸ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁶ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁷ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁹ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade

Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.²⁰⁰ However, with the

Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰¹ (2) trade details schemas;²⁰² and (3) CAT billing scenarios.²⁰³

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on

for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years.' Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

²⁰¹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰² Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰³ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁹ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

²⁰⁰ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA

September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰⁴ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁵ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁶

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁷

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁸ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁹ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

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,²¹⁰ 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,²¹¹ 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,²¹² 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.²¹³ 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."²¹⁴ 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 paid by the CEBBs and CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT

²⁰⁴ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁵ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁶ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁷ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁸ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁹ Securities Exchange Act Release No. 99371 (January 17, 2024), 89 FR 10963 (February 13, 2024) (SR-CboeBYX-2024-002).

²¹⁰ 15 U.S.C. 78f(b)(6).

²¹¹ 15 U.S.C. 78f(b)(4).

²¹² 15 U.S.C. 78f(b)(8).

²¹³ See Section 6(b)(1) of the Exchange Act.

²¹⁴ CAT NMS Plan Approval Order at 84697.

Assessment 1 fees to be collected are directly associated with the 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 Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 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."²¹⁵ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁶ 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 Historical CAT Assessment 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 Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁷ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments 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 Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

The formula for calculating a Historical Fee Rate requires the amount of Historical CAT Costs to be recovered.

Specifically, Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan requires a fee filing to provide:

a brief description of the amount and type of the Historical CAT Costs, 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.

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

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 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 costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁸ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume 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,

²¹⁵ CAT NMS Plan Approval Order at 84696.

²¹⁶ CAT Funding Model Approval Order at 62686.

²¹⁷ *Id.* at 62662–63.

²¹⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

including the expected volume of data and the breadth of services provided and market rates for similar services.²¹⁹ 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 day²²⁰ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²¹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²²

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 an amendment 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.²²³

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²⁴ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees 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.²²⁵ 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.²²⁶ The services performed by FCAT for each period and the costs related to such services are described above.²²⁷

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁸ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees 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 FCAT-negotiated fees for Kingland'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, were reasonable and appropriate.²²⁹ The services performed by Kingland for each period and the costs for each period are described above.²³⁰

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³¹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. It is common practice to utilize a change

²¹⁹ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²⁰ Appendix D-4 of the CAT NMS Plan at n.262.

²²¹ CAT NMS Plan Approval Order at 84801.

²²² See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²³ 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).

²²⁴ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁵ See Section 3(a)(2)(B)(i)(b) above.

²²⁶ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁷ *Id.*

²²⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁹ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²³⁰ *Id.*

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

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 determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³² As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³³ Capitalized developed technology costs include costs related to 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 costs for each period are described in more detail above.²³⁴ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁵ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in

accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁶ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁷

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁸ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁹

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²⁴⁰ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴¹ and

because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴² CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴³ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴⁴ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁵

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁶ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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."²⁴⁷ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁸ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁹

the Company have no employees." Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614, 30621 (May 17, 2016).

²⁴² 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.

²⁴³ See Section 3(a)(2)(B)(i)(g) above.

²⁴⁴ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁵ *Id.*

²⁴⁶ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁷ Section 4.1.5 of appendix D of the CAT NMS Plan.

²⁴⁸ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁹ *Id.*

²³² See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁴ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁵ *Id.*

²³⁶ See Section 3(a)(2)(B)(i)(e) above.

²³⁷ See Section 3(a)(2)(B)(i)(b) above.

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁹ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²⁴⁰ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴¹ As stated in the filing of the proposed CAT NMS Plan, "[i]t is the intent of the Participants that

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁵⁰ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵¹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵² Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵³

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵⁴ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁵ Moreover, the total costs for such

financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁶

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁷

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁸

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁹ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were 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.²⁶⁰ By engaging a public relations firm, CAT LLC was better positioned to understand and address

CAT issues to the benefit of all market participants.²⁶¹ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶² As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

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

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. 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 will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶³ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. CAT LLC determined that such an approach was reasonable as the CAT's annual executed equivalent share volume has

²⁵⁰ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁵¹ See Section 3(a)(2)(B)(i)(i) above.

²⁵² See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵³ *Id.*

²⁵⁴ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁵ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁶ *Id.*

²⁵⁷ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁸ *Id.*

²⁵⁹ Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁶⁰ See Section 3(a)(2)(B)(i)(j) above.

²⁶¹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶² *Id.*

²⁶³ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

remained relatively constant in recent years. 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶⁴

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁵ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 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.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁶ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or

inefficiencies.²⁶⁷ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 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 Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁸ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁹ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery

Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 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) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 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 Historical CAT Assessments 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. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, 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 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.

²⁶⁴ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁵ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁶ See CAT Funding Model Approval Order at 62663, 62682.

²⁶⁷ *Id.*

²⁶⁸ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁹ CAT Funding Model Approval Order at 62629.

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

Section 6(b)(8) of the Act²⁷⁰ 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 Historical CAT Assessment 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 Historical CAT Assessment 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.²⁷¹ 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. Historical CAT Assessment 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 Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act²⁷² and Rule 19b-4(f)(2) thereunder,²⁷³ 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-CboeBYX-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-CboeBYX-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-CboeBYX-2024-031 and should be submitted on or before October 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20464 Filed 9-10-24; 8:45 am]

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²⁷⁰ 15 U.S.C. 78f(b)(8).

²⁷¹ CAT Funding Model Approval Order at 62676-86.

²⁷² 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷³ 17 CFR 240.19b-4(f)(2).

²⁷⁴ 17 CFR 200.30-3(a)(12).



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Part VI

Securities and Exchange Commission

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100953; File No. SR–PEARL–2024–37]

Self-Regulatory Organizations; MIAX PEARL LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Equities Fee Schedule To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 2024.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”) ¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 23, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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 Exchange’s Fee Schedule applicable to trading of equity securities trading on the Exchange (the “Fee Schedule”) to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”) ⁴ and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT

Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-equities/pearl-equities/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

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.⁵ On November 15, 2016, the Commission approved the CAT NMS Plan.⁶ 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.⁷ 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.⁸

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 (“Prospective CAT Costs” fees).⁹

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).” ¹⁰ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹¹

⁸ Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 FR 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”).

⁹ 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 only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

¹⁰ Section 11.3(b) of the CAT NMS Plan.

¹¹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs

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 Miami International Securities Exchange LLC (“MIAX Rule”) Rule 1701(u). The Exchange notes that MIAX Chapter XVII is incorporated by reference into the Exchange’s rulebook. As such, MIAX Chapter XVII also applies to the Exchange. 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 MIAX Rule 1701.

⁴ The term “CAT LLC” may be used to refer to Consolidated Audit Trail, LLC or CAT NMS, LLC, depending on the context.

⁵ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁶ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁷ Section 11.1(b) of the CAT NMS Plan.

Each Historical CAT Assessment to be paid by CEBBs and CEBs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹² In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, 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.'" ¹³ The Plan further states that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment."¹⁴ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁵

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁶ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁷ 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.¹⁸

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT) ¹⁹

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) ²⁰

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

via the Historical CAT Assessment is reasonable." CAT Funding Model Approval Order at 62662.

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

¹³ Section 11.1(b) of the CAT NMS Plan.

¹⁴ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁵ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁶ Securities Exchange Act Rel. No. 99382 (Jan. 17, 2024), 89 FR 10658 (Feb. 13, 2024) (SR-PEARL-2024-02).

¹⁷ 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.

¹⁸ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs 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.

¹⁹ 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").

²⁰ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

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)²¹

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 Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, 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 shall be counted as 0.01 executed equivalent share.²²

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²³ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67). The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are provided in accordance with

the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, 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.”²⁴ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

²¹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²² Section 11.3(a)(i)(B) and 11.3(b)(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.

²³ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²⁴ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for pre-FAM period (prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
<i>Technology Costs:</i>	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁵

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT,

including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [sic] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost 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. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁶ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁷ and FCAT, in turn, paid

AWS. CAT LLC was funded via loan contributions by the Participants.²⁸

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS 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 the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided 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,"²⁹ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."³⁰ However,

See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁸ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

²⁹ Appendix D-4 of the CAT NMS Plan at n.262.

³⁰ Appendix D-5 of the CAT NMS Plan.

²⁵ 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.

²⁶ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁷ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC.

the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities

Participant Data,³¹ Phase 2a and Phase 2b Industry Member Data³² (including certain linkages), as well as SIP Data,³³ reference data and other types of Other Data.³⁴ The following chart provides

data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁵

	Date Range: 3/29/19 to 4/12/20 *	Date Range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	N/A ***	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. 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.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁶ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁷

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁸ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

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. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁹

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

³¹ See Section 6.3(d) of the CAT NMS Plan.

³² See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³³ See Section 6.5(a)(ii) of the CAT NMS Plan.

³⁴ See appendix C–108 of the CAT NMS Plan.

³⁵ Note that the volume data described in this table does not include CAIS data.

³⁶ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁷ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields,

Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁸ *Id.*

³⁹ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;⁴⁰ and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). 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.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland").

Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland'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. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴¹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴²

(d) Technology Costs—Change Request Fees

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 change 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. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC

incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴³

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴⁴ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT

⁴³ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketregrule613-info-notice-of-plan-processor-selection.pdf>.

⁴⁰ The CAT website is <https://www.catnmsplan.com>.

⁴¹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴² Phased Reporting Exemptive Relief Order at 23079–80.

was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from

November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

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. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;

- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;

- Provided assistance with compliance with Regulation SCI;

- Assisted with clock synchronization study;

- Provided assistance with respect to the establishment of CAT security;

- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided advice regarding CAT policies and procedures;

- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and

- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, 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.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. 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.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A

variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [sic] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA

as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided 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;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate

entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

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.⁴⁵ The professional and administration costs 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. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase

market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁶ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public

⁴⁵ Section 9.2 of the CAT NMS Plan.

⁴⁶ See Section 6.5(a)(ii) of the CAT NMS Plan.

relations firms provided 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 were 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.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the

public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire

a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁷ which covers the period from June 22, 2020—July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs:	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	-
Legal	481,687
Consulting	137,209
Insurance	-
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁸

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁹ CAT LLC

completed the requirements of FAM Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array

of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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

⁴⁷ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁸ As discussed above, 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.

⁴⁹ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

testing, test, and production environments, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC

continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in

the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁵⁰

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to

the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided

⁵⁰ Note that the volume data described in this table does not include CAIS data.

by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a

proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this

firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵¹ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵²

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵³

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵⁴

⁵¹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵² As discussed above, 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.

⁵³ See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵⁴ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the

CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public

relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁵ which covers the period from January 1, 2021—December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
Technology Costs	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁶

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer

Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁷

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT,

including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including

⁵⁵ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁶ As discussed above, 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.

⁵⁷ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following

chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage

footprint of the CAT during FAM Period 3.⁵⁸

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT

Alerts, meetings, presentations and webinars;

- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the

following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington &

⁵⁸ Note that the volume data described in this table does not include CAIS data.

Burling LLP (“Covington”) during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC’s proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC’s exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC’s April 6, 2021 order instituting proceedings,⁵⁹ and assessed legal matters regarding the SEC’s October 29, 2021 order denying the proposed Plan amendment.⁶⁰

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶¹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with

respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC’s disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT’s response to the SEC’s disapproval order. This work accounted for a minority of Covington’s fees in 2021.⁶²

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte’s CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors’ and officers’ liability insurance, and errors

⁵⁹ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁶⁰ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶¹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the “2020 Orders”).

⁶² As discussed above with regard to Pillsbury’s work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC’s efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the

accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15,

2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶³

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶³In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs:	
Cloud Hosting Services.	
Operating Fees.	
CAIS Operating Fees.	
Change Request Fees.	
Legal	6,143,278
Consulting	4,452,106
Insurance.	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g.,

Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided 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).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs

paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶⁴ which was the date by which Participants were required to begin reporting to the CAT.⁶⁵ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁶ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁷ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery

⁶⁴ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁵ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁶ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁷ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁸ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁹ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁷⁰

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. 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 Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁷¹ 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.⁷²

⁶⁸ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁹ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁷⁰ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷¹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷² CAT Funding Model Approval Order at 62664.

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 the 24 months of Historical Recovery Period 1 by doubling 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷³

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 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 Historical CAT Assessment.⁷⁴

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁵ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate

in a fee filing for a Historical CAT Assessment.⁷⁶

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁷

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁸

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁹ A CEBB 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.⁸⁰ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each

CEBB and CEBS is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸¹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸²

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a 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 Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸³

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in

⁷³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷⁴ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁵ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁶ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁷ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁸ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBSs and CEBBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁹ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁸⁰ See proposed paragraph (a)(1)(B) of the fee schedule.

⁸¹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸² In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸³ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 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 \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

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

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁵ 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)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1

in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 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)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 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 \$0.000013 per executed equivalent share."

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that "Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time." This proposed paragraph would further state that "Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect."

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT

LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that "[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b)."

(B) Manner of Payment

Paragraph (b)(1) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states 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." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁶ The Plan Processor has established a billing system for CAT fees.⁸⁷ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(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;

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸⁷ 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.

⁸⁴ CAT Funding Model Approval Order at 62658, n.658.

⁸⁵ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

or (b) the maximum rate permitted by applicable law.⁸⁸

Accordingly, the Exchange previously has added this requirement to the Exchange's fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

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 Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each 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.⁸⁹

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁹⁰ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, 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 on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹¹ 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 Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 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 Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) 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 Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹² The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹³ As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹⁴ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

⁹² Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹³ Section 11.6(b) of the CAT NMS Plan.

⁹⁴ Section 11.6 of the CAT NMS Plan.

⁸⁸ Section 11.4 of the CAT NMS Plan.

⁸⁹ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁹⁰ 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.

⁹¹ 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.

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.⁹⁵ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁶ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁷

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 "is consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Equities 2a file submission and data integrity validations.'"⁹⁸ 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.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that "Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)" was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of "equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information" was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is "consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Options 2b file submission and data integrity validations.'"¹⁰⁰ 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.

⁹⁵ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁷ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these 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.

⁹⁸ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) ("FAM Adopting Release").

⁹⁹ Phased Reporting Exemptive Relief Order at 23076–78.

¹⁰⁰ FAM Adopting Release at 31330, n.98.

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.¹⁰¹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order

cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. 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 fourth quarter of 2020,¹⁰² Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰³ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰⁴
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

¹⁰² Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰³ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰⁴ Q4 2020 Quarterly Progress Report (Oct. 20, 2021).

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁵ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and

¹⁰⁵ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁶ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁷ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰¹ Phased Reporting Exemptive Relief Order at 23078.

CEBSs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. 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 fourth quarter of 2021,¹⁰⁸ Full Availability and Regulatory Utilization of Transactional Database

Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁹ FINRA retired OATS effective September 1, 2021.¹¹⁰ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. 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 orders(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.¹¹¹

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.¹¹²

¹⁰⁹ *Id.*

¹¹⁰ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹¹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹² *Id.* at 23079.

¹⁰⁸ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

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)(iii)(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.¹¹³

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 will include 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).¹¹⁴

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁵ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c

and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁶

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, 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, 2021.¹¹⁷

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁸

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁹

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for

¹¹⁶ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁹ Settlement Exemptive Order at 77129 n.13.

¹¹⁴ *Id.* at 23079–80.

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹³ *Id.*

the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹²⁰ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not

considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²¹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²² Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²³

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule

613(j)(8).¹²⁴ The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁵

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁶ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁷ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only

¹²⁰ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²¹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²² See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²³ *Id.*

¹²⁴ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁵ *Id.* at n.11.

¹²⁶ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁷ *Id.* at 10.

cover the period through December 31, 2021. The relevant exemption for this time period is the Commission's November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the "2020 Verbal Quotes Order").¹²⁸ The Commission has stated that, "to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied."¹²⁹ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹³⁰

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability

Milestones."¹³¹ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³² Similarly, the CAT NMS Plan expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³³

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³⁴ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting

services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³⁵ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan.

¹³⁵ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

¹²⁸ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the "2020 Verbal Quotes Exemption").

¹²⁹ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission's statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹³⁰ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³¹ *Id.* at 77129 n.12.

¹³² FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³³ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³⁴ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁶

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁷

In the context of the SEC's adoption of Rule 613, commenters urged the

Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁸ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁹

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹⁴⁰ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴¹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable

approach.¹⁴² As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴³ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴⁴

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁵ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁶ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁷

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which

¹³⁶ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁷ See detailed discussion of RFP questions in appendix C of the CAT NMS Plan, and incorporation of RFP requirements in appendix D at D-2.

¹³⁸ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁹ Rule 613 Adopting Release at 45738–39.

¹⁴⁰ Rule 613 Adopting Release at 45739.

¹⁴¹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴² *Id.*

¹⁴³ *Id.* at 11153.

¹⁴⁴ *Id.* at 11159.

¹⁴⁵ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁶ See Selection Plan Approval Order.

¹⁴⁷ Selection Plan Approval Order at 11160.

bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out

in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁸

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁹

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the

Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁵⁰ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵¹ The Participants filed two supplements to the request for exemptive relief.¹⁵²

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵³ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵⁴

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the

¹⁵⁰ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵¹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵² See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵³ See 2016 Exemptive Order.

¹⁵⁴ *Id.* at 11857.

¹⁴⁸ See CAT NMS Plan Approval Order at 84737.

¹⁴⁹ See Section D(11) of appendix C of the CAT NMS Plan.

reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁵

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁶

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted

two extensions of this deadline.¹⁵⁷ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁸ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁹ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁶⁰

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶¹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶²

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for

WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement.

¹⁵⁵ *Id.*

¹⁵⁶ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁷ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁸ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁹ March 2013 Exemptive Order at 15772.

¹⁶⁰ *Id.* at 15773.

¹⁶¹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶² See CAT NMS Plan Approval Order.

Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workflow design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include 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.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is 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.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and

development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple,

Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶³

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶⁴ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁵ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private

network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁶

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁷

¹⁶³ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶⁴ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁵ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁶ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁷ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Theysys, it utilized certain aspects of the technical specifications created by Theysys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁸ AWS provides the

following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.
- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁹
- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.
- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.
- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best

practice is to focus on a single primary strategic provider."¹⁷⁰

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁷¹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷² In keeping with these

¹⁶⁸ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁹ Strategic Cloud Assessment Article.

¹⁷⁰ *Id.*

¹⁷¹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷² Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷³ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation

and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷⁴

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large

and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue."¹⁷⁵ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁶ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁷

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁸ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in

¹⁷⁵ CAT NMS Plan Approval Order at 84737.

¹⁷⁶ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁷ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁸ CAT Funding Model Approval Order at 62650.

¹⁷³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

¹⁷⁴ Settlement Exemptive Order at 77129–30.

hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁸⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸¹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer

Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸² To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸³
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸⁴

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT

began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁵
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁶

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁷ and, as of

¹⁸⁵ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁶ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁷ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/events>).

¹⁸² *Id.* at 23078–79, n.70.

¹⁸³ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁴ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁷⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸¹ See Phased Reporting Exemptive Relief Order at 23079–80.

May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁸

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁹⁰ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the

average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹¹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry

Members incur through their use of exchange facilities.¹⁹² Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹³ In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹⁴

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁵ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting.”¹⁹⁶

¹⁹² See, e.g., NASDAQ Equities Rule 4626.

¹⁹³ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (i.e., repeatedly over the course of a trading day for many Industry Members).

¹⁹⁴ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹⁵ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf.

¹⁸⁸ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing

such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁷ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁸ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and

¹⁹⁷ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁸ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex

aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁹ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs,

¹⁹⁹ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;²⁰⁰ (2) trade details schemas;²⁰¹ and (3) CAT billing scenarios.²⁰²

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰³ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰⁴ 485 participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁵

²⁰⁰ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰¹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰² CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰³ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰⁴ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁵ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

- *Frequently Asked Questions (FAQs)*. CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁶

- *Mock Invoices*. To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance*. CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁷ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁸ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

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,²⁰⁹ 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,²¹⁰ 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,²¹¹ 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.²¹² 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."²¹³ 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 paid by the CEBBs and CEBBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the 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 Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry

²⁰⁶ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁷ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁸ Securities Exchange Act Rel. No. 99382 (Jan. 17, 2024), 89 FR 10658 (Feb. 13, 2024) (SR-PEARL-2024-02).

²⁰⁹ 15 U.S.C. 78f(b)(6).

²¹⁰ 15 U.S.C. 78f(b)(4).

²¹¹ 15 U.S.C. 78f(b)(8).

²¹² See Section 6(b)(1) of the Exchange Act.

²¹³ CAT NMS Plan Approval Order at 84697.

Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 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."²¹⁴ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁵ 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 Historical CAT Assessment 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 Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁶ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments 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 Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

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

a brief description of the amount and type of the Historical CAT Costs, 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.

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

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 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 costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁷ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume 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.²¹⁸ 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

²¹⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁸ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁴ CAT NMS Plan Approval Order at 84696.

²¹⁵ CAT Funding Model Approval Order at 62686.

²¹⁶ *Id.* at 62662–63.

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 day²¹⁹ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²²⁰ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²¹

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 an amendment 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.²²²

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²³ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees 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.²²⁴ 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.²²⁵ The services

performed by FCAT for each period and the costs related to such services are described above.²²⁶

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁷ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees 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 FCAT-negotiated fees for Kingland'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, were reasonable and appropriate.²²⁸ The services performed by Kingland for each period and the costs for each period are described above.²²⁹

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²³⁰ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 determined that the change

²²² 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).

²²³ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁴ See Section 3(a)(2)(B)(i)(b) above.

²²⁵ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁶ *Id.*

²²⁷ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁸ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁹ *Id.*

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁹ Appendix D–4 of the CAT NMS Plan at n.262.

²²⁰ CAT NMS Plan Approval Order at 84801.

²²¹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³¹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³² Capitalized developed technology costs include costs related to 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 costs for each period are described in more detail above.²³³ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³⁴ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁵ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement

with FCAT as the successor Plan Processor.²³⁶

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁸

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁹ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²⁴⁰ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such

matters.²⁴¹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴² CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴³ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴⁴

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁵ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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."²⁴⁶ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁷ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁸

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁹ CAT LLC determined that the professional

²⁴¹ 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.

²⁴² *See* Section 3(a)(2)(B)(i)(g) above.

²⁴³ *See* Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴⁴ *Id.*

²⁴⁵ *See* Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁶ *See* Section 4.1.5 of appendix D of the CAT NMS Plan.

²⁴⁷ *See* Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁸ *Id.*

²⁴⁹ *See* Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²³¹ *See* Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³² *See* Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³³ *See* Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³⁴ *Id.*

²³⁵ *See* Section 3(a)(2)(B)(i)(e) above.

²³⁶ *See* Section 3(a)(2)(B)(i)(b) above.

²³⁷ *See* Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁸ *See* Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁹ *See* Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²⁴⁰ 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).

and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁵⁰ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵¹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵²

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵³ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵⁴ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁵

The professional and administrative costs also include costs related to the

receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁶

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁷

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁸ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were 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.²⁵⁹ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁶⁰ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶¹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of

Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

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

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. 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 will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶² In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. 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, 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 Historical Recovery

²⁵⁰ See Section 3(a)(2)(B)(i)(i) above.

²⁵¹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵² *Id.*

²⁵³ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁴ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁵ *Id.*

²⁵⁶ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁷ *Id.*

²⁵⁸ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁹ See Section 3(a)(2)(B)(i)(j) above.

²⁶⁰ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶¹ *Id.*

²⁶² As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶³

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶⁴ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 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.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (*e.g.*, \$0.0009 per share to 0.0004 per share),²⁶⁵ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁶ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 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 Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁷ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁸ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 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) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 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 Historical CAT Assessments 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. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, 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 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 Act²⁶⁹ 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

²⁶³ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶⁴ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁵ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁶ *Id.*

²⁶⁷ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁸ CAT Funding Model Approval Order at 62629.

²⁶⁹ 15 U.S.C. 78f(b)(8).

Exchange notes that Historical CAT Assessment 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 Historical CAT Assessment 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.²⁷⁰ 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. Historical CAT Assessment 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 Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 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

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 Exchange Act²⁷¹ and Rule 19b-4(f)(2) thereunder,²⁷² 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-PEARL-2024-37 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-2024-37. 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-2024-37 and should be submitted on or before October 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷³

Sherry R. Haywood,

Assistant Secretary.

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BILLING CODE 8011-01-P

²⁷⁰ CAT Funding Model Approval Order at 62676-86.

²⁷¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷² 17 CFR 240.19b-4(f)(2).

²⁷³ 17 CFR 200.30-3(a)(12).



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Part VII

Securities and Exchange Commission

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100945; File No. SR–IEX–2024–15]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 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 30, 2024, the Investors Exchange LLC (“IEX” 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

Pursuant to the provisions of Section 19(b)(1) of the Act, IEX is filing with the Commission a proposed rule change to establish fees for Industry Members related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022. These fees would be payable to Consolidated Audit Trail, LLC (“CAT LLC” or “the Company”) and referred to as Historical CAT Assessment 1, and would be described in a section of the Exchange’s fee schedule entitled “Consolidated Audit Trail Funding Fees.” The fee rate for Historical CAT Assessment 1 will be \$0.000013 per executed equivalent share. CAT Executing Brokers will receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 calculated based on their transactions as CAT Executing Brokers for the Buyer (“CEBB”) and/or CAT Executing Brokers for the Seller (“CEBS”) in October 2024.

The text of the proposed rule change is available at the Exchange’s website at www.iextrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

A. Self-Regulatory Organization’s Statement of the Purpose of, and 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.³ On November 15, 2016, the Commission approved the CAT NMS Plan.⁴ 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.⁵ 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.⁶

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 (“Prospective CAT Costs” fees).⁷

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”⁸ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.⁹

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants’ one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on

⁷ 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 only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

⁸ Section 11.3(b) of the CAT NMS Plan.

⁹ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

⁴ Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁵ Section 11.1(b) of the CAT NMS Plan.

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

the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹⁰ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBs (as described in more detail below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, 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.’”¹¹ The Plan further states that “Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.”¹² Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as

Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹³

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁴ The Exchange has withdrawn its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBs for each applicable transaction in Eligible Securities.¹⁵ 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.¹⁶

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁷

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)¹⁸

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

¹⁰ Section 11.3(b)(ii) of the CAT NMS Plan.

¹¹ Section 11.1(b) of the CAT NMS Plan.

¹² Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹³ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁴ See Securities Exchange Act Rel. No. 99379 (January 17, 2024), 89 FR 11039 (February 13, 2024) (SR-JEX-2024-01).

¹⁵ 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.

¹⁶ Section 1.1 of the CAT NMS Plan. Note that CEBBs and CEBs 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.

¹⁷ 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”).

¹⁸ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

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) ¹⁹

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 Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 (“Historical Fee Rate 1”) by dividing the Historical CAT Costs for Historical CAT Assessment 1 (“Historical CAT Costs 1”) by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 (“Historical Recovery Period 1”), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, 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 shall be counted as 0.01 executed equivalent share.²⁰

(B) Historical CAT Costs 1

The CAT NMS Plan states that “[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment.”²¹ As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 (“Excluded Costs”). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing “a brief description of the amount and type of Historical CAT Costs, 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.”²² Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 (“Pre-FAM Period”) and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Capitalized Developed Technology Costs**	\$51,847,150
Technology Costs	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485
CAIS Operating Fees	2,072,908
Change Request Fees	141,346

¹⁹ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²⁰ Section 11.3(a)(i)(B) and 11.3(b)(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.

²¹ Section 11.3(b)(i)(C) of the CAT NMS Plan.

²² Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (prior to June 22, 2020) *
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

** The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²³

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data

activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [*sic*] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost 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. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁴ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁵ and FCAT, in turn, paid AWS. CAT LLC was funded via loan contributions by the Participants.²⁶

²⁴ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁵ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

²⁶ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS 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 the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided 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,"²⁷ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁸ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities Participant Data,²⁹ Phase 2a and Phase 2b Industry Member Data³⁰ (including certain linkages), as well as SIP Data,³¹ reference data and other types of Other

²³ 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.

²⁷ Appendix D-4 of the CAT NMS Plan at n.262.

²⁸ Appendix D-5 of the CAT NMS Plan.

²⁹ See Section 6.3(d) of the CAT NMS Plan.

³⁰ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³¹ See Section 6.5(a)(ii) of the CAT NMS Plan.

Data.³² The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³³

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/20 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

* The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. 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.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁴ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to

develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁵

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁶ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

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. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period),

the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁷

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;

- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

³² See appendix C-108 of the CAT NMS Plan.

³³ Note that the volume data described in this table does not include CAIS data.

³⁴ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁵ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields, Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁶ *Id.*

³⁷ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;³⁸ and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). 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.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland'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. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.³⁹ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴⁰

(d) Technology Costs—Change Request Fees

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 change 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. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA and SIP data feeds, and the reprocessing of certain exchange data.⁴¹

³⁹ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴⁰ Phased Reporting Exemptive Relief Order at 23079–80.

⁴¹ Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴² The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT, but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical

⁴² Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

³⁸ The CAT website is <https://www.catnmsplan.com>.

Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of

factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

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. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint

Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC

determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, 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.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. 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 analysis.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of

these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided 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;

- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;

- Coordinated efforts regarding the selection of the successor Plan Processor;

- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

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.⁴³ The professional and administration costs 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. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC,

including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁴ In addition, the fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March

2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided 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 were

⁴³ Section 9.2 of the CAT NMS Plan.

⁴⁴ See Section 6.5(a)(ii) of the CAT NMS Plan.

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.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with

market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market

rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁵ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs:	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁶

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁷ CAT LLC completed the requirements of FAM Period 1 by July 31, 2020. The following

describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM

⁴⁵ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁶ As discussed above, 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.

⁴⁷ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data,

Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁴⁸

		Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:		
Participant—Equities		6
Participant—Options		103
Industry Member—Equities		7
Industry Member—Options		0.31
SIP—Options & Equities		74
Average Total Daily Volume		185
Cumulative Total Events for the Period		5,190
Total Compute Hours for the Period		2,612,082
Storage Footprint at End of Period (Petabytes)		57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;

- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;

- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work

on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM

⁴⁸ Note that the volume data described in this table does not include CAIS data.

Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services. The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups; and

- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already funded by Participants during Period 2 of the Financial Accountability Milestones (“FAM Period 2”),⁴⁹ which

covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 2 *
Capitalized Developed Technology Costs **	\$6,761,094
<i>Technology Costs:</i>	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC’s review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵⁰

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵¹

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵²

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11

⁴⁹ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵⁰ As discussed above, 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.

⁵¹ See definition of “Full Implementation of Core Equity Reporting Requirements” in Section 1.1 of the CAT NMS Plan.

⁵² Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor,

including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;

- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;

- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);

- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;

- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;

- Worked with and provided support to the Operating Committee and various CAT working groups;

- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audit by an independent auditor; and

- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵³ which

covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be

responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 *
Capitalized Developed Technology Costs **	\$10,763,372
<i>Technology Costs:</i>	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

* The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁴

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁵

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 3.⁵⁶

⁵³ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁴ As discussed above, 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.

⁵⁵ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

⁵⁶ Note that the volume data described in this table does not include CAIS data.

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372

include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury & Covington & Burling LLP ("Covington") during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error

corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;

- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
 - Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
 - Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
 - Drafted SRO rule filings related to the CAT Compliance Rule;
 - Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
 - Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
 - Provided guidance regarding SRO rule filings for the retirement of systems;
 - Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
 - Provided assistance with change requests;
 - Provided guidance and regulatory support for litigation regarding the response to the SEC's exemptive orders;
 - Assisted with communications with the industry, including CAT Alerts and presentations;
 - Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
 - Assisted with cost management analysis and proposals; and
 - Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.
- Law Firm: Pillsbury.* CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments

submitted following the SEC's April 6, 2021 order instituting proceedings,⁵⁷ and assessed legal matters regarding the SEC's October 29, 2021 order denying the proposed Plan amendment.⁵⁸

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁵⁹ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC's disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT's response to the SEC's disapproval order. This work accounted for a minority of Covington's fees in 2021.⁶⁰

⁵⁷ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁸ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁵⁹ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the "2020 Orders").

⁶⁰ As discussed above with regard to Pillsbury's work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for

this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The

fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs (“Excluded Costs”): (1) \$14,749,362 of

costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15, 2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶¹

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Excluded costs for November 15, 2017–November 15, 2018*
Capitalized Developed Technology Costs	\$37,852,083
<i>Technology Costs:</i>	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	

⁶¹ In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs “is reasonable in the Commission’s view because it would not require all costs incurred by the Participants to be recovered from Industry Members

through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor.” CAT Funding Model Approval Order at 62663. In addition to the first two

categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

** The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;

- Provided assistance related to CAT security;

- Drafted exemptive requests, including requests related to PII;

- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;

- Provided interpretations of and related to the CAT NMS Plan;

- Provided advice with regard to regulator access to the CAT;

- Assisted with the Plan Processor transition;

- Provided assistance regarding communications with the industry regarding the CAT;

- Provided advice regarding Customer Account Information and PII;

- Provided support for litigation related to SEC exemptive orders; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;

- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g., Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;

- Provided support for updating the SEC on the progress of the development of the CAT; and

- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin.

From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;

- Provided cash management and treasury functions;

- Facilitated bill payments;

- Provided monthly bookkeeping;

- Reviewed vendor invoices and documentation in support of cash disbursements;

- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;

- Addressed various accounting, financial reporting and operating inquiries from Participants;

- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided 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).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶² which was the date by which Participants were

required to begin reporting to the CAT.⁶³ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁴ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁵ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to

Section 31.⁶⁶ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁷ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁶⁸

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. 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 Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months."⁶⁹ 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.⁷⁰

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 the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. The

⁶³ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁴ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁵ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

⁶⁶ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁷ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁸ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁶⁹ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷⁰ CAT Funding Model Approval Order at 62664.

⁶² As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷¹

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 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 Historical CAT Assessment.⁷²

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷³ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate in a fee filing for a Historical CAT Assessment.⁷⁴

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company,

Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁵

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁶

(4) Monthly Fees

CEBBs and CEBs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁷ A CEBB 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.⁷⁸ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBs is required to pay its CAT fees "each month."

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁷⁹ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual

recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸⁰

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBs shall pay a 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 Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸¹

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 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 \$0.000013 per executed equivalent share.

⁸⁰ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸¹ Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷¹ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷² Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷³ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

⁷⁴ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁵ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁶ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁷ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁸ See proposed paragraph (a)(1)(B) of the fee schedule.

⁷⁹ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

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

As noted in the Plan amendment for the CAT Funding Model, “as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.”⁸² Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸³ 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)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 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)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month

thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that “Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis.” Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 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 \$0.000013 per executed equivalent share.”

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that “Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time.” This proposed paragraph would further state that “Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.”

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would

state that “[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b).”

(B) Manner of Payment

Paragraph (b)(1) to the “Consolidated Audit Trail Funding Fees” section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states 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.” The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁴ The Plan Processor has established a billing system for CAT fees.⁸⁵ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(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.⁸⁶

Accordingly, the Exchange previously has added this requirement to the Exchange’s fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

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

⁸⁴ Section 11.4 of the CAT NMS Plan.

⁸⁵ 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.

⁸⁶ Section 11.4 of the CAT NMS Plan.

⁸² CAT Funding Model Approval Order at 62658, n.658.

⁸³ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

basis points, or (ii) the maximum rate permitted by applicable law.

The requirements of paragraph (b)(2) would apply to Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each 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.⁸⁷

Such information would provide CEBBs and CEBBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁸ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, 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 on an exchange, and (3) by buy-side transactions and sell-side transactions."⁸⁹ 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 Historical CAT Assessment 1 is in effect as well as the total amount

invoiced for Historical CAT Assessment 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 Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) 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 Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹⁰ The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹¹ As discussed in detail below, all

applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹² ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

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.⁹³ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁴ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry

⁸⁷ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸⁸ 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.

⁸⁹ 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.

⁹⁰ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹¹ Section 11.6(b) of the CAT NMS Plan.

⁹² Section 11.6 of the CAT NMS Plan.

⁹³ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁴ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁵

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 “is consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Equities 2a file submission and data integrity validations.’”⁹⁶ 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.⁹⁷

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)” was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information” was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is “consistent with the functionality that the Participants describe on the CAT NMS Plan website as ‘Production Go-Live for Options 2b

file submission and data integrity validations.’”⁹⁸ 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.⁹⁹

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

⁹⁸ FAM Adopting Release at 31330, n.98.

⁹⁹ Phased Reporting Exemptive Relief Order at 23078.

⁹⁵ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these 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.

⁹⁶ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) (“FAM Adopting Release”).

⁹⁷ Phased Reporting Exemptive Relief Order at 23076–78.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. 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 fourth quarter of 2020,¹⁰⁰ Full Implementation of Core Equity

Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰¹ In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰²
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available

attributes and data sources.¹⁰³ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁴

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁵

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and CEBBs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple

¹⁰³ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁴ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁵ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰⁰ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰¹ For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰² Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and Appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)–(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. 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 fourth quarter of 2021,¹⁰⁶ Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021.

Specifically, the "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System ("OATS") is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁷ FINRA retired OATS effective September 1, 2021.¹⁰⁸ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of "Full Availability and Regulatory Utilization of Transactional

Database Functionality" require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. 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 orders(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.¹⁰⁹

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.¹¹⁰

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

¹⁰⁶ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹⁰⁷ *Id.*

¹⁰⁸ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹⁰⁹ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹⁰ *Id.* at 23079.

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.¹¹¹

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 will include 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).¹¹²

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully

implemented as of December 13, 2021."¹¹³ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁴

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to

regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, 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, 2021.¹¹⁵

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in Appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁶

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁷

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations Related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones ("FAMs") for Periods 1

¹¹⁵ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ Settlement Exemptive Order at 77129 n.13.

¹¹¹ *Id.*

¹¹² *Id.* at 23079–80.

¹¹³ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁴ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

through 3.¹¹⁸ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule 613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹¹⁹

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²⁰ Indeed, members of the

Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²¹

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²² The Commission, however, did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²³

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on

the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁴ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁵ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁶ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁷ Here, the

¹¹⁸ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹¹⁹ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²⁰ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²¹ *Id.*

¹²² Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²³ *Id.* at n.11.

¹²⁴ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁵ *Id.* at 10.

¹²⁶ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁷ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁸

(iii) November 2023 Order

CAT LLC does not believe that the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order") affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that "the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones."¹²⁹ The November 2023 Exemption Order is consistent with the Commission's repeated statements in the FAM adopting release that it would have "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," citing Section 36 of the Exchange Act and Rule 608.¹³⁰ Similarly, the CAT NMS Plan

expressly contemplates the Commission's ability to grant exemptive relief from any CAT NMS Plan requirement.¹³¹

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³² As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to

create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as "plan sponsors"), and between the Participants and Industry Members (referred to as "members of the plan sponsors").¹³³ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan ("Pre-Formation Costs") were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5 million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the

¹²⁸ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹²⁹ *Id.* at 77129 n.12.

¹³⁰ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors." 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is

consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system." 17 CFR 242.608(e).

¹³¹ Section 12.3 of the CAT NMS Plan ("[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.")

¹³² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³³ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁴

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁵

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the NMS plan.¹³⁶ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an

RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁷

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹³⁸ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹³⁹

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴⁰ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')."¹⁴¹ After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids

in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴²

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴³ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁴ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁵

The Selection Plan divided the review and evaluation of bids, and the selection of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed "Qualified Bids," and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for

¹³⁴ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁵ See detailed discussion of RFP questions in appendix C of the CAT NMS Plan, and incorporation of RFP requirements in appendix D at D-2.

¹³⁶ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁷ Rule 613 Adopting Release at 45738–39.

¹³⁸ Rule 613 Adopting Release at 45739.

¹³⁹ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 11153.

¹⁴² *Id.* at 11159.

¹⁴³ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁴ See Selection Plan Approval Order.

¹⁴⁵ Selection Plan Approval Order at 11160.

formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants' joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a "reasonable approach," that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue":

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁶

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful

dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁷

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, "the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality."¹⁴⁸ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-

Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁴⁹ The Participants filed two supplements to the request for exemptive relief.¹⁵⁰

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵¹ In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵²

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵³

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was

¹⁴⁹ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵⁰ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵¹ See 2016 Exemptive Order.

¹⁵² *Id.* at 11857.

¹⁵³ *Id.*

¹⁴⁷ See Section D(11) of appendix C of the CAT NMS Plan.

¹⁴⁸ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) ("2016 Exemptive Order").

¹⁴⁶ See CAT NMS Plan Approval Order at 84737.

originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (*e.g.*, addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁴

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁵ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁶ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁷ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the

additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁵⁸

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁵⁹ Following the comment period, the SEC approved the Plan in November 2016.¹⁶⁰

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;

- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;

- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;

- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;

- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;

- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants’ independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;

¹⁵⁴ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

¹⁵⁵ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁶ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁷ March 2013 Exemptive Order at 15772.

¹⁵⁸ *Id.* at 15773.

¹⁵⁹ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶⁰ See CAT NMS Plan Approval Order.

- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;

- Provided support for updating the SEC on the progress of the development of the CAT;

- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include 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.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan

and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is 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.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations (“DevOps”) tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and

other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven

trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an amendment to address several of these expensive Plan requirements.¹⁶¹

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to

streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶² The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶³ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the

implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁴

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁵

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

¹⁶¹ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶² See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶³ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁴ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

¹⁶⁵ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data, FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁶ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.
- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.
- *Track Record of Innovation.* AWS continues to rapidly innovate, both in

terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁷

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁶⁸

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational

setup, identify management, accounts, environments, DevOps tooling likes release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that "the reasonably budgeted CAT costs shall include . . . legal costs."¹⁶⁹ In addition, the CAT NMS Plan also requires Participants to include in their fee filings "a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs."¹⁷⁰ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the

¹⁶⁶ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁷ Strategic Cloud Assessment Article.

¹⁶⁸ *Id.*

¹⁶⁹ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷¹ Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission's interpretations of the CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷²

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the

specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791 in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that "the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor," and that "the process set forth in the Selection Plan should be permitted to continue."¹⁷³ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁴ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that "SIFMA looks forward to commencing work with the SROs and Thesys."¹⁷⁵

As noted in the CAT Funding Model Approval Order, "[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members."¹⁷⁶ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

¹⁷³ CAT NMS Plan Approval Order at 84737.

¹⁷⁴ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁵ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁶ CAT Funding Model Approval Order at 62650.

¹⁷¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷² Settlement Exemptive Order at 77129–30.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁷ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁷⁸ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS. These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁷⁹ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸⁰ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID

Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸¹

- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December 2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸²

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸³

¹⁸¹ The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸² Such contact points with the industry are described in detail on the Events webpage of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸³ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁴

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁵ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

¹⁸⁴ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁸⁵ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁷⁷ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁸ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷⁹ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸⁰ *Id.* at 23078–79, n.70.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁶

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁷ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁸⁸ In keeping with these provisions, a brief description of reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting

Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁸⁹ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹⁰ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹¹ In addition, such a

provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹²

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹³ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁴ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong

terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (*i.e.*, repeatedly over the course of a trading day for many Industry Members).

¹⁹² See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁹³ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁴ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁶ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁷ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁸ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹⁰ See, e.g., NASDAQ Equities Rule 4626.

¹⁹¹ FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its

background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;
- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and records independently maintained by individual CAT Reporters (e.g., exchange trade journals/acknowledgements) and data sources of self-regulatory organizations independent of CAT; and
- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms' ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a "reconciliation" and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm's internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm's internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying

trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms' Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm's internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters' ability to match the underlying trades provided by CAT

with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁵ to CAT Reporters in the trade billing details provided with their CAT invoices ("Additional Trade Details"). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter's internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in relation to Section 31.¹⁹⁶ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their

¹⁹⁵ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁶ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales value fees for many years.¹⁹⁷ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

• *Technical Specifications and Scenarios.* CAT LLC has provided

¹⁹⁷ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;¹⁹⁸ (2) trade details schemas;¹⁹⁹ and (3) CAT billing scenarios.²⁰⁰

• *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰¹ The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices; and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰² 485 participants and 394 participants attended the two webinars, respectively.

• *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰³

• *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and

¹⁹⁸ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

¹⁹⁹ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰⁰ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰¹ CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

²⁰² CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰³ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

CAT LLC will provide additional responses to FAQs as warranted.²⁰⁴

- **Mock Invoices.** To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for 569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- **Help Desk Assistance.** CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁵ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in

December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁶ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

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,²⁰⁷ 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,²⁰⁸ 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,²⁰⁹ 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.²¹⁰ 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."²¹¹ 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 paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the 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 Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 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.

²⁰⁴ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁵ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁶ See Securities Exchange Act Rel. No. 99379 (January 17, 2024), 89 FR 11039 (February 13, 2024) (SR-IEX-2024-01).

²⁰⁷ 15 U.S.C. 78f(b)(6).

²⁰⁸ 15 U.S.C. 78f(b)(4).

²⁰⁹ 15 U.S.C. 78f(b)(8).

²¹⁰ See Section 6(b)(1) of the Exchange Act.

²¹¹ CAT NMS Plan Approval Order at 84697.

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.”²¹² Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹³ 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 Historical CAT Assessment 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 Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁴ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments 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 Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

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

a brief description of the amount and type of the Historical CAT Costs, 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.

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

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide “sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate.” As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is “reasonable and appropriate.” Each of the costs included in Historical CAT Costs 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 costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁵ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume 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.²¹⁶ 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

²¹⁵ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²¹⁶ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹² CAT NMS Plan Approval Order at 84696.

²¹³ CAT Funding Model Approval Order at 62686.

²¹⁴ *Id.* at 62662–63.

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 day²¹⁷ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²¹⁸ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²¹⁹

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 an amendment 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.²²⁰

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²¹ CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees 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.²²² 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.²²³ The services performed by FCAT for each period and the costs related to such services are described above.²²⁴

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁵ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT

Costs 1. The CAIS operating fees 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 FCAT-negotiated fees for Kingland'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, were reasonable and appropriate.²²⁶ The services performed by Kingland for each period and the costs for each period are described above.²²⁷

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT Assessments.²²⁸ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²²⁹ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of

²²⁰ 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).

²²¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²² See Section 3(a)(2)(B)(i)(b) above.

²²³ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁴ *Id.*

²²⁵ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁶ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁷ *Id.*

²²⁸ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁹ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²¹⁷ Appendix D–4 of the CAT NMS Plan at n.262.

²¹⁸ CAT NMS Plan Approval Order at 84801.

²¹⁹ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³⁰ Capitalized developed technology costs include costs related to 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 costs for each period are described in more detail above.²³¹ CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³² With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³³ In addition, as described above, CAT LLC determined that it is appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁴

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁵ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁶

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of Historical CAT Assessments.²³⁷ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²³⁸ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²³⁹ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴⁰ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴¹ Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the

costs related to such services are described above.²⁴²

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴³ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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."²⁴⁴ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing offered by the alternative insurers.²⁴⁵ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁶

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁷ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT

²³⁰ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³¹ See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³² *Id.*

²³³ See Section 3(a)(2)(B)(i)(e) above.

²³⁴ See Section 3(a)(2)(B)(i)(b) above.

²³⁵ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁶ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

²³⁷ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁸ 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).

²³⁹ 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.

²⁴⁰ See Section 3(a)(2)(B)(i)(g) above.

²⁴¹ See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴² *Id.*

²⁴³ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁴ Section 4.1.5 of appendix D of the CAT NMS Plan.

²⁴⁵ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁶ *Id.*

²⁴⁷ Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁴⁸ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁴⁹ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵⁰

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the balance of these considerations.²⁵¹ Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵² Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵³

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁴

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the

effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁵

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁶ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public relations services were 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.²⁵⁷ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁸ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁵⁹ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

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

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. 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 will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶⁰ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. 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, 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶¹

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the

²⁴⁸ See Section 3(a)(2)(B)(i)(i) above.

²⁴⁹ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁰ *Id.*

²⁵¹ See Section 3(a)(2)(B)(i)(i) above.

²⁵² See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵³ *Id.*

²⁵⁴ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁵ *Id.*

²⁵⁶ Section 11.3(b)(iii)(B)(III)(B)(6) of the CAT NMS Plan.

²⁵⁷ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁸ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁵⁹ *Id.*

²⁶⁰ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

²⁶¹ This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶² Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 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.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶³ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁴ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 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 Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁵ In approving the CAT

Funding Model, the SEC stated that “[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable.”²⁶⁶ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 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) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 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 Historical CAT Assessments 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. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, 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 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 Act²⁶⁷ 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 Historical CAT Assessment 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 Historical CAT Assessment 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

²⁶² CAT Funding Model Approval Order at 62658, n.658.

²⁶³ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁴ *Id.*

²⁶⁵ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁶ CAT Funding Model Approval Order at 62629.

²⁶⁷ 15 U.S.C. 78f(b)(8).

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.²⁶⁸ 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. Historical CAT Assessment 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 Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 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

Not applicable.

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 Act²⁶⁹ and Rule 19b-4(f)(2) thereunder,²⁷⁰ 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-IEX-2024-15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-IEX-2024-15. 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-IEX-2024-15 and should be submitted on or before October 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷¹

Sherry R. Haywood,

Assistant Secretary.

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²⁶⁸ CAT Funding Model Approval Order at 62676-86.

²⁶⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷⁰ 17 CFR 240.19b-4(f)(2).

²⁷¹ 17 CFR 200.30-3(a)(12).



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Part VIII

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100941; File No. SR–BX–2024–032]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Industry Members Related to Certain Historical Costs of the National Market System Plan Governing the Consolidated Audit Trail

September 5, 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 23, 2024, Nasdaq BX, Inc. (“BX” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish fees for Industry Members³ related to certain historical costs of the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) incurred prior to January 1, 2022.

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

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 (“Prospective CAT Costs” fees).⁸

Under the CAT Funding Model, “[t]he Operating Committee will establish one or more fees (each a ‘Historical CAT Assessment’) to be payable by Industry Members with regard to CAT costs previously paid by the Participants (‘Past CAT Costs’).”⁹ In establishing a Historical CAT Assessment, the Operating Committee will determine a “Historical Recovery Period” and calculate a “Historical Fee Rate” for that Historical Recovery Period. Then, for each month in which a Historical CAT Assessment is in effect, each CEBB and CEBS would be required to pay the fee—the Historical CAT Assessment—for each transaction in Eligible Securities executed by the CEBB or CEBS from the prior month as set forth in CAT Data, where the Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate.¹⁰

Each Historical CAT Assessment to be paid by CEBBs and CEBSs is designed to contribute toward the recovery of two-thirds of the Historical CAT Costs. Because the Participants previously have paid Past CAT Costs via loans to the Company, the Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants’ one-third share of Historical CAT Costs will be paid by the cancellation of loans made by the Participants to the Company on a pro rata basis based on the outstanding loan amounts due under the loans, instead of through the payment of a CAT fee.¹¹ In addition, the Participants also will be 100% responsible for certain Excluded Costs (as discussed below).

CAT LLC proposes to charge CEBBs and CEBSs (as described in more detail

⁸ 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 only establishes Historical CAT Assessment 1 related to certain Historical CAT Costs as described herein; it does not address any other potential Historical CAT Assessment related to other Historical CAT Costs. In addition, under the CAT Funding Model, the Operating Committee also may establish CAT Fees related to CAT costs going forward. Section 11.3(a) of the CAT NMS Plan. This filing does not address any potential CAT Fees related to CAT costs going forward. Any such other fee for any other Historical CAT Assessment or CAT Fee for Prospective CAT Costs will be subject to a separate fee filing.

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

¹⁰ In approving the CAT Funding Model, the Commission stated that, “[i]n the Commission’s view, the proposed recovery of the Past CAT Costs via the Historical CAT Assessment is reasonable.” CAT Funding Model Approval Order at 62662.

¹¹ Section 11.3(b)(ii) of the CAT NMS Plan.

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) (BX 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).

⁴ Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012) (“Rule 613 Adopting Release”).

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”).

below) Historical CAT Assessment 1 to recover certain historical CAT costs incurred prior to January 1, 2022, 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.’”¹² The Plan further states that “Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment.”¹³ Accordingly, the purpose of this filing is to implement a Historical CAT Assessment on behalf of CAT LLC for Industry Members, referred to as Historical CAT Assessment 1, in accordance with the CAT NMS Plan.¹⁴

The Exchange previously filed a fee filing to implement Historical CAT Assessment 1. On January 17, 2024, the SEC published this prior filing for

Historical CAT Assessment 1, temporarily suspended the fee filing, and instituted proceedings to determine whether to approve or disapprove the fee filing.¹⁵ The Exchange is withdrawing its original fee filing for Historical CAT Assessment 1. This Historical CAT Assessment 1 replaces the prior Historical CAT Assessment 1 that was previously filed with the Commission.

(1) CAT Executing Brokers

Historical CAT Assessment 1 will be charged to each CEBB and CEBS for each applicable transaction in Eligible Securities.¹⁶ 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.¹⁷

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for the transactions executed on an exchange.

EQUITY ORDER TRADE (EOT)¹⁸

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)¹⁹

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

¹² Section 11.1(b) of the CAT NMS Plan.

¹³ Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan.

¹⁴ Note that there may be one or more Historical CAT Assessments depending on the timing of the completion of the Financial Accountability Milestones, among other things. Section 11.3(b) of the CAT NMS Plan.

¹⁵ Securities Exchange Act Rel. No. 34–99358 (January 17, 2024), 89 FR 10773 (February 13, 2024) (“SR–BX–2024–002”).

¹⁶ 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.

¹⁷ 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.

¹⁸ 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”).

¹⁹ See Table 51, Section 5.2.5.1 (Simple Option Trade Event) of the CAT Reporting Technical Specifications for Plan Participants.

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)²⁰

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 Historical Fee Rate 1

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 ("Historical Fee Rate 1") by dividing the Historical CAT Costs for Historical CAT Assessment 1 ("Historical CAT Costs 1") by the projected total executed share volume of all transactions in Eligible Securities for the Historical Recovery Period for Historical CAT Assessment 1 ("Historical Recovery Period 1"), as discussed in detail below. Based on this calculation, the Operating Committee has determined that Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. This rate is then divided by three and rounded to determine the fee rate of \$0.000013 per executed equivalent share that will be assessed to CEBBs and CEBBs, as also discussed in detail below.

(A) Executed Equivalent Shares for Transactions in Eligible Securities

Under the CAT NMS Plan, for purposes of calculating each Historical CAT Assessment, 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 shall be counted as 0.01 executed equivalent share.²¹

(B) Historical CAT Costs 1

The CAT NMS Plan states that "[t]he Operating Committee will reasonably determine the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee. Each Historical CAT Assessment will seek to recover from CAT Executing Brokers two-thirds of Historical CAT Costs incurred during the period covered by the Historical CAT Assessment."²² As described in detail below, Historical CAT Costs 1 would be \$318,059,819. This figure includes Past CAT Costs of \$401,312,909 minus certain Excluded Costs of \$83,253,090. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), plus the Excluded Costs of \$83,253,090. CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67), and CEBBs collectively will be responsible for one-third of Historical CAT Costs 1 (which is \$106,019,939.67).

The following describes in detail Historical CAT Costs 1 with regard to four separate historical time periods as well as Past CAT Costs excluded from Historical CAT Costs 1 ("Excluded Costs"). The following cost details are

provided in accordance with the requirement in the CAT NMS Plan to provide in the fee filing "a brief description of the amount and type of Historical CAT Costs, 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."²³ Each of the costs described below are reasonable, appropriate and necessary for the creation, implementation and maintenance of CAT.

(i) Historical CAT Costs Incurred Prior to June 22, 2020 (Pre-FAM Costs)

Historical CAT Costs 1 would include costs incurred by CAT prior to June 22, 2020 ("Pre-FAM Period") and already funded by the Participants, excluding Excluded Costs (described further below). Historical CAT Costs 1 would include costs for the Pre-FAM Period of \$124,290,730. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$41,430,243.33), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$41,430,243.33) and CEBBs paying one-third (\$41,430,243.33). These costs do not include Excluded Costs, as discussed further below. The following table breaks down Historical CAT Costs 1 for the Pre-FAM Period into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (Prior to June 22, 2020) *
Capitalized Developed Technology Costs **	\$51,847,150
Technology Costs:	33,568,579
Cloud Hosting Services	10,268,840
Operating Fees	21,085,485

²⁰ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²¹ Section 11.3(a)(i)(B) and 11.3(b)(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.

²² Section 11.3(b)(i)(C) of the CAT NMS Plan.

²³ Section 11.3(b)(iii)(B)(II)(B) of the CAT NMS Plan.

Operating expense	Historical CAT costs 1 for Pre-FAM Period (Prior to June 22, 2020) *
CAIS Operating Fees	2,072,908
Change Request Fees	141,346
Legal	19,674,463
Consulting	17,013,414
Insurance	880,419
Professional and administration	1,082,036
Public relations	224,669
Total Operating Expenses	124,290,730

* The costs described in this table of costs for the Pre-FAM Period were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website. In addition, in accordance with Section 6.6(a)(i) of the CAT NMS Plan, in 2018 CAT LLC provided the SEC with "an independent audit of fees, costs, and expenses incurred by the Participants on behalf of the Company prior to the Effective Date of the Plan that will be publicly available." The audit is available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$2,115,545 incurred during the period prior to June 22, 2020 have been appropriately excluded from the above table.²⁴

The Pre-FAM Period includes a broad range of CAT-related activity from 2012 through June 22, 2020, including the evaluation of the requirements of SEC Rule 613, the development of the CAT NMS Plan, the evaluation and selection of the initial and successor Plan Processors, the commencement of the creation and implementation of the CAT to comply with Rule 613 and the CAT NMS Plan, including technical specifications for transaction reporting and regulatory access, and related technology and the commencement of reporting to the CAT. The following describes the costs for each of the categories for the Pre-FAM Period.

(a) Technology Costs—Cloud Hosting Services

The \$10,268,840 in technology costs for cloud hosting services represent costs incurred for services provided by the cloud services provider for the CAT, Amazon Web Services, Inc. ("AWS"), during the Pre-FAM Period.

As part of its proposal for acting as the successor Plan Processor for the CAT, FCAT selected AWS as a subcontractor to provide cloud hosting services. In 2019, after reviewing the capabilities of other cloud services providers, FCAT determined that AWS was the only cloud services provider at that time sufficiently mature and capable of providing the full suite of necessary cloud services for the CAT, including, for example, the security, resiliency and complexity necessary for

the CAT computing requirements. The use of cloud hosting services is standard for this type of high-volume data activity and reasonable and necessary for implementation of the CAT, particularly given the substantial data volumes associated with the CAT.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay FCAT the fees incurred by the Plan Processor for cloud hosting services provided by AWS as FCAT's subcontractor [sic] on a monthly basis for the cloud hosting services, and FCAT, in turn, pays such fees to AWS. The fees for cloud hosting services were negotiated by FCAT on an arm's length basis with the goals of managing cost 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. The fees for cloud hosting services during the Pre-FAM Period were paid to FCAT by CAT NMS, LLC²⁵ and subsequently Consolidated Audit Trail, LLC (as previously noted, both entities are referred to generally as "CAT LLC"),²⁶ and FCAT, in turn, paid

²⁵ CAT NMS, LLC was formed by FINRA and the U.S. national securities exchanges to implement the requirements of SEC Rule 613 under the Exchange Act. SEC Rule 613 required the SROs to jointly submit to the SEC the CAT NMS Plan to create, implement and maintain the CAT. The SEC approved the CAT NMS Plan on November 15, 2016. CAT NMS Plan Approval Order.

²⁶ On August 29, 2019, the Participants formed a new Delaware limited liability company named Consolidated Audit Trail, LLC for the purpose of conducting activities related to the CAT from and after the effectiveness of the proposed amendment of the CAT NMS Plan to replace CAT NMS, LLC. See Securities Exchange Act Rel. No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019).

AWS. CAT LLC was funded via loan contributions by the Participants.²⁷

AWS was engaged by FCAT to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS include storage services, databases, compute services and other services (such as networking, management tools and DevOps tools). AWS also was engaged to provide various environments for CAT, such as development, performance testing, test and production environments.

The cost for AWS 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 the CAT. During the Pre-FAM Period from the engagement of AWS in February 2019 through June 2020, AWS provided 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,"²⁸ and that "[i]t is expected that the Central Repository will grow to more than 29 petabytes of raw, uncompressed data."²⁹ However, the volume of CAT Data for the Pre-FAM Period was far in excess of these predicted levels. By the end of this period, data submitted to the CAT included options and equities

²⁷ For each of the costs paid by CAT NMS, LLC and Consolidated Audit Trail, LLC as discussed throughout this filing, CAT NMS, LLC and Consolidated Audit Trail, LLC paid these costs via loan contributions by the Participants to CAT NMS, LLC and Consolidated Audit Trail, LLC, respectively.

²⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²⁹ Appendix D-5 of the CAT NMS Plan.

²⁴ 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 non-cash expense.

Participant Data,³⁰ Phase 2a and Phase 2b Industry Member Data³¹ (including certain linkages), as well as SIP Data,³²

reference data and other types of Other Data.³³ The following chart provides data regarding the average daily volume,

cumulative total events, total compute hours and storage footprint of the CAT during the Pre-FAM Period.³⁴

	Date range: 3/29/19 to 4/12/20 *	Date range: 4/13/20 to 6/21/2 **
Average Daily Volume in Billions:		
Participant—Equities	5	5
Participant—Options	80	981
Industry Member—Equities		3
Industry Member—Options		0.04
SIP—Options & Equities	64	70
Average Total Daily Volume	149	166
Cumulative Total Events for the Period	3,890	4,990
Total Compute Hours for the Period	*** N/A	5,663,247
Storage Footprint at End of Period (Petabytes)	30.57	47.96

** The Participant Equities in RSA format.

** Start of Industry Member reporting on 4/13/2020.

*** Note that, although there were compute hours during this period, data related to such compute hours are no longer available in current data.

(b) Technology Costs—Operating Fees

The \$21,085,485 in technology costs related to operating fees represent costs incurred with regard to activities of FCAT as the Plan Processor. 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.

FCAT was selected to assume the role of the successor Plan Processor. Prior to this selection, the Participants engaged in discussions with two prior Bidders³⁵ for the successor Plan Processor role. The Operating Committee formed a Selection Subcommittee in accordance with Section 4.12 of the CAT NMS Plan to evaluate and review Bids and to make a recommendation to the Operating Committee with respect to the selection of the successor Plan Processor. In an April 9, 2019 letter to the Commission, the Participants described the reasons for its selection of the successor Plan Processor:

The Selection Subcommittee considered factors including, but not limited to, the following, in recommending FINRA to the Operating Committee as the successor Plan Processor:

a. FINRA's specialized technical expertise and capabilities in the area of broker-dealer technology;

b. The need to appoint a successor Plan Processor with specialized expertise to develop, implement, and maintain the CAT System in accordance with the CAT NMS Plan and SEC Rule 613;

c. FINRA's detailed proposal in response to CATLLC's recent inquiries; and

d. FINRA's data query and analytics systems demonstration to the Participants.

Based on these and other factors, the Selection Subcommittee determined that FINRA was the most appropriate Bidder to become the successor Plan Processor.³⁶

On February 26, 2019, the Operating Committee (with FINRA recusing itself) voted to select FINRA as the successor Plan Processor pursuant to Section 6.1(t) of the CAT NMS Plan.³⁷ On March 29, 2019, CAT LLC and FCAT (a wholly owned subsidiary of FINRA) entered into a Plan Processor Agreement pursuant to which FCAT would perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT.

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. The operating fees during the Pre-FAM Period were paid to FCAT by CAT LLC.

From March 29, 2019 (the commencement of the Plan Processor Agreement with FCAT) through June 22, 2020 (the end of the Pre-FAM Period), the Plan Processor's activities with respect to the CAT included the following:

- Commenced user acceptance testing with market data provided by Exegy Incorporated ("Exegy"), a market data provider;³⁸

- Published Technical Specifications and related reporting scenarios documents for Phase 2a, 2b and 2c reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Facilitated testing for Phase 2a and 2b reporting for Industry Members;

- Began developing Technical Specifications and related reporting scenarios documents for Phase 2d reporting for Industry Members, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;

- Published Central Repository Access Technical Specifications, and provided regulator access to test data from Industry Members;

- Facilitated Participant exchanges that support options market makers sending Quote Sent Time to the CAT;

- Facilitated the introduction of OPRA and Options NBBO Other Data to CAT;

³⁰ See Section 6.3(d) of the CAT NMS Plan.

³¹ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 FR 23075 (Apr. 24, 2020) ("Phased Reporting Exemptive Relief Order") for a description of Phase 2a and Phase 2b Industry Member Data.

³² See Section 6.5(a)(ii) of the CAT NMS Plan.

³³ See appendix C–108 of the CAT NMS Plan.

³⁴ Note that the volume data described in this table does not include CAIS data.

³⁵ The term "Bidder" is defined in Section 1.1 of the CAT NMS Plan.

³⁶ Letter from Michael J. Simon, Chair, CAT NMS, LLC Operating Committee, to Brent J. Fields,

Secretary, SEC (Apr. 9, 2019), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection-040919.pdf>.

³⁷ *Id.*

³⁸ The use of Exegy to provide market data, including the costs and market data provided, is discussed below in Section 3(a)(2)(B)(i)(i).

- Addressed compliance items, including drafting CAT policies and procedures, and addressing requirements under Regulation SCI;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants, the SEC and its staff;
- Operated the FINRA CAT Helpdesk, which is the primary source for answers to questions about CAT, including questions regarding: clock synchronization, firm reporting responsibilities, interpretive questions, technical specifications for reporting to CAT and more;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content;³⁹ and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

The \$2,072,908 in technology costs related to CAIS operating fees represent the fees paid for FCAT's subcontractor charged with the development and operation of CAT's Customer and Account Information System ("CAIS"). 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.

During the Pre-FAM Period, the CAIS-related services were provided by the Plan Processor through the Plan Processor's subcontractor, Kingland Systems Incorporation ("Kingland"). Kingland had experience operating in the securities regulatory technology space, and as a part of its proposal for acting as the Plan Processor for the CAT, FCAT selected Kingland as a subcontractor to provide certain CAIS-related services.

Under the Plan Processor Agreement with FCAT, CAT LLC is required to pay to the Plan Processor the fees incurred by FCAT for CAIS-related services provided by FCAT through Kingland on a monthly basis. FCAT negotiated the fees for Kingland'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. The fees for CAIS-related services during the Pre-FAM Period were paid by CAT LLC to FCAT. FCAT, in turn, paid Kingland.

During the Pre-FAM Period, Kingland began development of the CAIS Technical Specifications and the building of CAIS. In addition, Kingland also worked on the build related to the CCID Alternative, an alternative approach to customer information that was not included in the CAT NMS Plan as originally adopted.⁴⁰ Furthermore, Kingland also worked on the acceleration of the reporting of large trader identifiers ("LTID") earlier than originally contemplated during this period, in accordance with exemptive relief granted by the SEC.⁴¹

(d) Technology Costs—Change Request Fees

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 change 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. The change request costs were paid by CAT LLC to FCAT. During the Pre-FAM Period, CAT LLC incurred costs of \$141,346 related to change requests implemented by FCAT. Such change requests related to a development fee regarding the OPRA

and SIP data feeds, and the reprocessing of certain exchange data.⁴²

(e) Technology Costs—Capitalized Developed Technology Costs

This category of costs includes capitalizable application development costs incurred in the development of the CAT. The capitalized developed technology costs for the Pre-FAM Period of \$51,847,150 relate to technology provided by the Initial Plan Processor and the successor Plan Processor.

Initial Plan Processor: Thesys CAT, LLC. The capitalized developed technology costs related to the Initial Plan Processor include costs incurred with regard to testing for Participant reporting, Participant reporting to the CAT, a security assessment of the CAT, and the development of the billing function for the CAT.

On January 17, 2017, the Selection Committee of the CAT NMS Plan selected the Initial Plan Processor, Thesys Technologies, LLC, for the CAT NMS Plan pursuant to Article V of the CAT NMS Plan.⁴³ The Participants utilized a request for proposal ("RFP") to seek proposals to build and operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan, taking into consideration that the Initial Plan Processor had experience operating in the securities regulatory technology space, among other considerations. On April 6, 2017, CAT LLC entered into an agreement with Thesys CAT LLC ("Thesys CAT"), a Thesys affiliate, to perform the functions and duties of the Plan Processor contemplated by the CAT NMS Plan, including the management and operation of the CAT. Under the agreement, CAT LLC would pay Thesys CAT a negotiated, fixed price fee for its role as the Initial Plan Processor. Effective January 30, 2019, the Plan Processor Agreement with Thesys CAT was terminated, and FCAT was subsequently selected as the successor Plan Processor.

From January 17, 2017 through January 30, 2019, the time in which the Thesys CAT was engaged for the CAT,

⁴² Note that CAT LLC also has incurred costs related to specific Industry Members (e.g., reprocessing costs related to Industry Member reporting errors).

⁴³ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

³⁹ The CAT website is <https://www.catnmsplan.com>.

⁴⁰ For a discussion of the CCID Alternative, see Securities Exchange Act Rel. No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020).

⁴¹ Phased Reporting Exemptive Relief Order at 23079–80.

but excluding the period from November 15, 2017 through January 30, 2019, the Initial Plan Processor engaged in various activities with respect to the CAT, including preparing iterative drafts of Participant Technical Specifications, Industry Member Technical Specifications and the Central Repository Access Technical Specifications. In addition, Thesys CAT also developed CAT technology, addressed compliance items, including drafting CAT policies and procedures, addressing Regulation SCI requirements, establishing a CAT Compliance Officer and a Chief Information Security Officer, addressed security-related matters for the CAT, and worked towards the initiation of Participant reporting per the Participant Technical Specifications.

Successor Plan Processor: FCAT. The capitalized developed technology costs related to FCAT include: (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, including the completion of go-live functionality related to options ingestion and validation, equities regulatory services agreement query tool updates and unlinked options data query, options linkages release, Industry Member Phase 2a file submission and data integrity (including error corrections), and Industry Member testing, including reporting relationships, ATS order type management, basic reporting statistics, SFTP data integrity feedback and error correction; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including a one-time development fee for a secure analytics workspace, a one-time development fee of an Industry Member connectivity solution, and a one-time development fee for the acceleration of multi-factor authentication; (3) CAIS implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$19,674,463 represent the fees paid for legal services provided by two law firms, Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") and Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury"), during the Pre-FAM Period. The legal costs exclude those costs incurred from November 15, 2017 through November 15, 2018.

Law Firm: WilmerHale. Following the adoption of Rule 613, the Participants determined it was necessary to engage

external legal counsel to advise the Participants with respect to corporate and regulatory legal matters related to the CAT, including drafting and developing the CAT NMS Plan. The Participants considered a variety of factors in their analysis of prospective law firms, including (1) the firm's qualifications, resources and expertise; (2) the firm's relevant experience and understanding of the regulatory matters raised by the CAT and in advising on matters of similar scope; (3) the composition of the legal team; and (4) professional fees. Following a series of interviews, the Participants acting as a consortium determined that WilmerHale was well qualified given the balance of these considerations and engaged WilmerHale in February 2013.

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. WilmerHale's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading law firms for similar work.

The legal costs for WilmerHale during the Pre-FAM Period included costs incurred from 2013 until June 22, 2020 to address corporate and regulatory legal matters related to the CAT. The legal fees for this law firm during the period from February 2013 until the formation of the CAT NMS, LLC on November 15, 2016 were paid directly by the exchanges and FINRA to WilmerHale. After the formation of CAT NMS LLC, the legal fees were paid by CAT LLC to WilmerHale.

After WilmerHale was engaged in 2013 through the end of the Pre-FAM Period on June 22, 2020 (excluding the legal costs from November 15, 2017 through November 15, 2018), WilmerHale provided legal assistance to the CAT on a variety of matters, including with regard to the following:

- Analyzed various legal matters associated with the Selection Plan, and drafted an amendment to the Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the Development Advisory Group ("DAG");
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the

governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan, and governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan and related filings;
- Negotiated and drafted the plan processor agreements with the Initial Plan Processor and the successor Plan Processor;
- Provided assistance with compliance with Regulation SCI;
- Assisted with clock synchronization study;
- Provided assistance with respect to the establishment of CAT security;
- Drafted exemptive requests from CAT NMS Plan requirements, including with regard to options market maker quotes, Customer IDs, CAT Reporter IDs, linking allocations to executions, CAT reporting timeline, FDIDs, customer and account information, timestamp granularity, small industry members, data facility reporting and linkage, allocation reports, SRO-assigned market participant identifiers and cancelled trade indicators, thereby seeking to implement changes that would be cost effective and benefit Industry Members and Participants;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided advice regarding CAT policies and procedures;
- Analyzed the SEC's amendment of the CAT NMS Plan regarding financial accountability;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues; and
- Assisted with third-party vendor agreements.

Law Firm: Pillsbury. The legal costs for CAT during the Pre-FAM Period include costs related to the legal services performed by Pillsbury. The Participants interviewed this law firm as

well as other potential law firms to provide legal assistance regarding certain liability matters. After considering a variety of factors in its analysis, including the relevant expertise and fees of the firm, CAT LLC determined to hire Pillsbury in April 2019. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees were paid by CAT LLC to Pillsbury. The legal costs for Pillsbury during the Pre-FAM Period included costs incurred from April 2019 until June 22, 2020 to address legal matters regarding the agreements between CAT Reporters and CAT LLC concerning certain terms associated with CAT Reporting (the "Reporter Agreement"). During that period, Pillsbury advised CAT LLC regarding applicable legal matters, participated in negotiations between the Participants and Industry Members, participated in meetings with senior SEC staff, the Chairman, and Commissioners, represented CAT LLC and the Participants in an SEC administrative proceeding, and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, 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.

(g) Consulting Costs

The consulting costs of \$17,013,414 represent the fees paid to the consulting firm Deloitte & Touche LLP ("Deloitte") as project manager during the Pre-FAM Period, from October 2012 until June 22, 2020. 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.

To help facilitate project management given the unprecedented complexity and scope of the CAT project, the Participants determined it was necessary to engage a consulting firm to assist with the CAT project in 2012, following the adoption of Rule 613. A variety of factors were considered in the analysis of prospective consulting firms, including (1) the firm's qualifications, resources, and expertise; (2) the firm's relevant experience and understanding of the regulatory issues raised by the CAT and in coordinating matters of

similar scope; (3) the composition of the consulting team; and (4) professional fees. Following a series of interviews, the exchanges and FINRA as a consortium determined that Deloitte was well qualified given the balance of these considerations and engaged Deloitte on October 1, 2012.

Deloitte's fee rates are negotiated on an annual basis and are in line with market rates for this type of specialized consulting work. CAT LLC assesses Deloitte's performance and reviews prospective budgets and staffing plans submitted by Deloitte on an annual basis. Deloitte's compensation arrangements are reasonable and appropriate, and in line with the rates charged by other leading consulting firms for similar work.

The consulting costs for CAT during the period from 2012 until the formation of the CAT NMS, LLC were paid directly by the Participants to Deloitte. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC to Deloitte. CAT LLC reviewed the consulting fees each month and approved the invoices.

After Deloitte was hired in 2012 through the end of the Pre-FAM Period on June 22, 2020 (excluding the consulting costs from November 15, 2017 through November 15, 2018), Deloitte provided a variety of consulting services, including the following:

- Established and implemented program operations for the CAT project, including the program management [*sic*] office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participant's independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Assisted with cost and funding-related activities for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (*e.g.*, Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding and Other Products) and the DAG, governance support during the transition to the new governance structure under the CAT NMS Plan and

governance support after the adoption of the CAT NMS Plan, which involved support for the Operating Committee, Advisory Committee, Compliance Subcommittee and CAT working groups;

- Provided 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;
- Assisted with industry outreach and communications regarding the CAT, including assistance with industry outreach events, the development of the CAT website, frequently asked questions, and coordinating with the CAT LLC's public relations firm;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress;
- Coordinated efforts regarding the selection of the successor Plan Processor;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor, including support for the Operating Committee and successor Plan Processor for the new role; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$880,419 represent the cost incurred for insurance for CAT during the Pre-FAM Period. Commencing in 2020, CAT LLC performed an evaluation of various potential alternatives for CAT insurance policies, which included engaging in discussions with different insurance companies and conducting cost comparisons of various alternative approaches to insurance. Based on an analysis of a variety of factors, including coverage and premiums, CAT LLC determined to purchase cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance from USI Insurance Services LLC ("USI"). Such policies are standard for corporate entities, and cyber security liability insurance is important for the CAT System. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

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.⁴⁴ The professional and administration costs 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. In addition, professional and administration costs for the Pre-FAM Period include costs related to the receipt of market data and a security assessment. The costs for these professional and administration services were \$1,082,036 for the Pre-FAM Period.

Financial Advisory Firm: Anchin Accountants & Advisors ("Anchin"). CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT in April 2018. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services were paid by CAT LLC to Anchin.

After Anchin was hired in April 2018 through the end of the Pre-FAM Period on June 22, 2020 (excluding the period from April 2018 through November 15, 2018), Anchin provided a variety of services, including the following:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and

financial budgets, including budget to actual fluctuation analyses;

- Addressed accounting and financial reporting matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;

- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;

- Prepared monthly, quarterly and annual financial statements;

- Supported the annual financial statement audits by an independent auditor;

- Reviewed historical costs from inception; and

- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton LLP ("Grant Thornton"). In February 2020, CAT LLC determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the proposed role given the balance of these considerations. Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services. The fees for these services were paid by CAT LLC to Grant Thornton.

Market Data Provider: Exegy. The professional and administrative costs for the Pre-FAM Period included costs related to the receipt of certain market data for the CAT pursuant to an agreement with the CAT LLC, and then with FCAT. Exegy provided SIP Data required by the CAT NMS Plan.

After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy from July 2018 through March 2019. CAT LLC determined that, unlike certain other vendors, Exegy provided market data that included all data elements required by the CAT NMS Plan.⁴⁵ In addition, the

fees were reasonable and in line with market rates for the market data received. Accordingly, the professional and administrative costs for the Pre-FAM Period include the Exegy costs from November 2018 through March 2019. The cost of the market data was reasonable for the market data received. The fees for the market data were paid directly by CAT LLC to Exegy.

Upon the termination of the contract between CAT LLC and Exegy, FCAT entered into a contract with Exegy to purchase the required market data from Exegy in July 2019. All costs under the contract were treated as a direct pass through cost to CAT LLC. Therefore, the fees for the market data were paid by CAT LLC to FCAT, who, in turn, paid Exegy for the market data.

Security Assessment: RSM US LLP ("RSM"). The operating costs for the Pre-FAM Period include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation, and operation of the controls specified by NIST Special Publication 800-53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment. RSM performed the assessment from October 2018 through December 2018. Accordingly, the costs for the Pre-FAM Period include the costs incurred in November and December 2018. The cost for the security assessment were paid directly to RSM by CAT LLC.

(j) Public Relations Costs

The public relations costs of \$224,669 represent the fees paid to public relations firms during the Pre-FAM Period for professional communications services to CAT, including media relations consulting, strategy and execution. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants. Specifically, the public relations firms provided 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

⁴⁴ Section 9.2 of the CAT NMS Plan.

⁴⁵ See Section 6.5(a)(ii) of the CAT NMS Plan.

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 were 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.

The services performed by each of the public relations firms were comparable. The fees for such services were reasonable and in line with market rates. Only one public relations firm was engaged at a time; the three firms were engaged sequentially as the primary public relations contact moved among the three firms during this time period.

Public Relations Firm: Peppercomm, Inc. ("Peppercomm"). The national securities exchanges and FINRA, acting as a consortium, determined to hire the public relations firm Peppercomm in October 2014 and continued to engage this firm through September 2017. The exchanges and FINRA made this engagement decision after considering a variety of factors in its analysis,

including the firm's relevant expertise and fees. The fee rates for this public relations firm were negotiated on an arm's length basis and were in line with market rates for these types of services. The public relations costs during the period from October 2014 until the formation of the CAT NMS, LLC were paid directly by the exchanges and FINRA to the public relations firm. After the formation of CAT NMS, LLC, the consulting fees were paid by CAT LLC.

Public Relations Firm: Sloane & Company ("Sloane"). CAT LLC determined to hire a new public relations firm, Sloane, in March 2018, based on, among other things, their expertise and the primary contact's history with the project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Sloane. CAT LLC continued the engagement with Sloane until February 2020.

Public Relations Firm: Peak Strategies. CAT LLC determined to hire a new public relations firm, Peak Strategies, in March 2020, based on, among other things, their expertise and the primary contact's history with the

project. The fee rates for this public relations firm were in line with market rates for these types of services. The fees during the Pre-FAM Period were paid by CAT LLC to Peak Strategies.

(ii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 1

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 1 of the Financial Accountability Milestones ("FAM Period 1"),⁴⁶ which covers the period from June 22, 2020–July 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 1 of \$6,377,343. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$2,125,781), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781). The following table breaks down Historical CAT Costs 1 for FAM Period 1 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 1 *
Capitalized Developed Technology Costs **	\$1,684,870
Technology Costs:	3,996,800
Cloud Hosting Services	2,642,122
Operating Fees	1,099,680
CAIS Operating Fees	254,998
Change Request Fees	
Legal	481,687
Consulting	137,209
Insurance	
Professional and administration	69,077
Public relations	7,700
Total Operating Expenses	6,377,343

* The costs described in this table of costs for FAM Period 1 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$362,121 incurred during FAM Period 1 have been appropriately excluded from the above table.⁴⁷

By the completion of FAM Period 1, CAT LLC was required to implement the reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of equities transaction data and options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.⁴⁸ CAT LLC completed the requirements of FAM

Period 1 by July 31, 2020. The following describes the costs for each of the categories for FAM Period 1.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 1 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS

continued to provide 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, during the FAM 1 Period. Accordingly, the \$2,642,122 in technology costs for cloud hosting

⁴⁶ Section 11.6(a)(i)(A) of the CAT NMS Plan.

⁴⁷ As discussed above, 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.

⁴⁸ See definition of "Initial Industry Member Core Equity and Options Reporting" in Section 1.1 of the CAT NMS Plan.

services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 1. The fee arrangement for AWS described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. Moreover, CAT LLC continued to believe that AWS's maturity in the cloud services space as well as the significant cost and time

necessary to move the CAT to a different cloud services provider supported the continued engagement of AWS.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 1 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included

options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, reference data and other types of Other Data. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 1.⁴⁹

	Date range: 6/22/20–7/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	103
Industry Member—Equities	7
Industry Member—Options	0.31
SIP—Options & Equities	74
Average Total Daily Volume	185
Cumulative Total Events for the Period	5,190
Total Compute Hours for the Period	2,612,082
Storage Footprint at End of Period (Petabytes)	57.47

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 1. Accordingly, the \$1,099,680 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 1. The fee arrangement for FCAT described above with regard to the Pre-FAM Period continued in place during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, FCAT's activities with respect to the CAT included the following:

- Published iterative drafts of draft Technical Specifications for Phase 2d, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Published iterative drafts of CAIS Technical Specifications, after substantial engagement with SEC staff, Industry Members and Participants on the Technical Specifications;
- Facilitated Industry Member reporting of Quote Sent Time on Options Market Maker quotes;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;

• Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;

- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 1. Accordingly, the \$254,998 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 1. The fee arrangement for Kingland described above with regard to the Pre-FAM Period continued in place

during FAM Period 1 pursuant to the Plan Processor Agreement. During FAM Period 1, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

CAT LLC did not incur costs related to change requests during FAM Period 1.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 1 of \$1,684,870 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include: (1) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including separate production and industry test entitlements, and reprocessing of exchange event timestamps; (2) implementation fees; and (3) license fees.

(f) Legal Costs

The legal costs of \$481,687 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 1.

⁴⁹ Note that the volume data described in this table does not include CAIS data.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 1 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to WilmerHale. During FAM Period 1, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Assisted with the development of the CAT funding model and drafted related amendments and fee filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, verbal activity, options market maker quote sent time, TRF linkages, and allocations;
- Provided interpretations related to CAT NMS Plan requirements, including the Financial Accountability Milestone amendment;
- Assisted with compliance with Regulation SCI;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the drafting of the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Assisted with communications and presentations for the industry regarding CAIS;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to response to OCIE examinations and the annual assessment;
- Provided guidance regarding CAT technical specifications;
- Assisted with third-party vendor agreements; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 1 were paid by CAT LLC to Pillsbury. During FAM Period 1, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted a proposed amendment to the CAT NMS Plan regarding liability matters. Liability

issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$137,209 represent the fees paid to Deloitte as project manager during FAM Period 1. CAT LLC continued to employ Deloitte during FAM Period 1 based on, among other things, their expertise and cumulative experience with the CAT. The fee rates for Deloitte during FAM Period 1 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 1 were paid by CAT LLC to the consulting firm. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 1, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Assisted with the transition from the Initial Plan Processor to the successor Plan Processor; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

Although insurance was in effect during FAM Period 1, CAT LLC did not incur costs related to insurance during FAM Period 1.

(i) Professional and Administration Costs

Financial Advisory Firm: Anchin. The professional and administration costs of \$69,077 represent the fees paid to Anchin during FAM Period 1. CAT LLC continued to employ Anchin during FAM Period 1 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these type of financial advisory services.

The fees for these services during FAM Period 1 were paid by CAT LLC to Anchin. During FAM Period 1, Anchin provided a variety of services, including the following:

- Maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups; and
- Prepared monthly and quarterly financial statements.

(j) Public Relations Costs

The public relations costs of \$7,700 represent the fees paid to Peak Strategies during FAM Period 1. CAT LLC continued to employ Peak Strategies during FAM Period 1 based on, among other things, their expertise and history with the project. The fee rates for this firm were reasonable and in line with market rates for these types of services. The fees for these services during FAM Period 1 were paid by CAT LLC to Peak Strategies. During FAM Period 1, Peak Strategies continued to provide professional communications services to CAT LLC, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public

relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iii) Historical CAT Costs Incurred in Financial Accountability Milestone Period 2

Historical CAT Costs 1 would include costs incurred by CAT LLC and already

funded by Participants during Period 2 of the Financial Accountability Milestones ("FAM Period 2"),⁵⁰ which covers the period from August 1, 2020–December 31, 2020. Historical CAT Costs 1 would include costs for FAM Period 2 of \$42,976,478. The Participants would remain responsible for one-third of this cost (which they have previously paid) (\$14,325,493),

and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$14,325,493) and CEBBs paying one-third (\$14,325,493). The following table breaks down Historical CAT Costs 1 for FAM Period 2 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM period 2*
Capitalized Developed Technology Costs**	\$6,761,094
Technology Costs:	31,460,033
Cloud Hosting Services	20,709,212
Operating Fees	9,108,700
CAIS Operating Fees	1,590,298
Change Request Fees	51,823
Legal	2,766,644
Consulting	532,146
Insurance	976,098
Professional and administration	438,523
Public relations	41,940
Total Operating Expenses	42,976,478

* The costs described in this table of costs for FAM Period 2 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

** The non-cash amortization of these capitalized developed technology costs of \$1,892,505 incurred during FAM Period 2 have been appropriately excluded from the above table.⁵¹

By the completion of FAM Period 2, CAT LLC was required to implement the following with regard to the CAT:

(a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, CustomerID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission.⁵²

CAT LLC completed the requirements of FAM Period 2 by December 31, 2020.

The following describes the costs for each of the categories for FAM Period 2.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 2 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 2 Period. Accordingly, the \$20,709,212 in technology costs for cloud hosting services represent costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 2. The fee arrangement for AWS described above with regard to the Pre-FAM

Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During the FAM 2 Period, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a and Phase 2b Industry Member Data (including certain linkages) as well as SIP Data, and Other Data, including reference data. In addition, Industry Members began reporting LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage footprint of the CAT during FAM Period 2.⁵³

⁵⁰ Section 11.6(a)(i)(B) of the CAT NMS Plan.

⁵¹ As discussed above, 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.

⁵² See definition of "Full Implementation of Core Equity Reporting Requirements" in Section 1.1 of the CAT NMS Plan.

⁵³ Note that the volume data described in this table does not include CAIS data.

	Date range: 8/1/20–12/31/20
Average Daily Volume in Billions:	
Participant—Equities	6
Participant—Options	116
Industry Member—Equities	11
Industry Member—Options	0.98
SIP—Options & Equities	80
Average Total Daily Volume	282
Cumulative Total Events for the Period	2,170
Total Compute Hours for the Period	15,660,392
Storage Footprint at End of Period (Petabytes)	114.59

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 2. Accordingly, the \$9,108,700 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 2. The fee arrangement for FCAT described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, FCAT's activities with respect to the CAT included publishing the Technical Specifications for Phase 2d and overseeing the reporting of firm to firm and intrafirm linkages by Industry Members. In addition, FCAT also continued to engage in the following activities during FAM Period 2:

- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the development and implementation of the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT Alerts, meetings, presentations and webinars;
- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 2. Accordingly, the \$1,590,298 in technology costs for CAIS operating fees represent costs incurred for services provided by Kingland during FAM Period 2. The fee arrangement for Kingland described above with regard to the Pre-FAM Period and FAM Period 1 continued in place during FAM Period 2 pursuant to the Plan Processor Agreement. During FAM Period 2, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs.

(d) Technology Costs—Change Request Fees

During FAM Period 2, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 2, CAT incurred costs of \$51,823 related to a change request regarding the addition of functionality for exchange Participants to report rejected messages to the CAT.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 2 of \$6,761,094 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the

CAT, as defined in the agreement between CAT LLC and the Plan Processor; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to separate production and industry test entitlements, market maker reference data, and back-processing of exchange exception logic; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$2,766,644 represent the fees paid for legal services provided by two law firms, WilmerHale and Pillsbury during FAM Period 2.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 2 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to WilmerHale. During FAM Period 2, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements regarding, for example, allocations, exchange activity, OTQT, initial data validation, error corrections and recordkeeping;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittees, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6 of the CAT NMS Plan;

- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for the Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC's proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Assisted with third-party vendor agreements (e.g., with regard to Anchin, Grant Thornton and insurance policies);
- Assisted with change requests; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 2 were paid by CAT LLC to Pillsbury. During FAM Period 2, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During that period, Pillsbury advised CAT LLC regarding applicable legal matters and drafted and filed a proposed amendment to the CAT NMS Plan regarding liability matters. As discussed above, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC's efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants.

(g) Consulting Costs

The consulting costs of \$532,146 represent the fees paid to Deloitte as project manager during FAM Period 2. CAT LLC continued to employ Deloitte during FAM Period 2 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 2 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 2 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 2, Deloitte's CAT-related activities included the following:

- Implemented program operations for the CAT project;

- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$976,098 represent the fees paid for insurance during FAM Period 2. CAT LLC continued to maintain cyber security liability insurance, directors' and officers' liability insurance, and errors and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$438,523 represent the fees paid to Anchin and Grant Thornton for financial services provided during FAM Period 2.

Financial Advisory Firm: Anchin. CAT LLC continued to engage Anchin during FAM Period 2 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these types of financial advisory services. The fees for these services during FAM Period 2 were paid by CAT LLC to Anchin. During FAM Period 2, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated [sic] bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;

- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from the Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audit by an independent auditor; and
- Reviewed historical costs from inception.

Accounting Firm: Grant Thornton CAT LLC continued to employ the accounting firm Grant Thornton during FAM Period 2 based on, among other things, its expertise and cumulative knowledge of CAT LLC. CAT LLC continued to believe that Grant Thornton was well qualified for its role and its fee rates were in line with market rates for these accounting services. The fees for these services during FAM Period 2 were paid by CAT LLC to Grant Thornton. During FAM Period 2, Grant Thornton performed a financial statement audit for CAT LLC as an independent accounting firm.

(j) Public Relations Costs

The public relations costs of \$41,940 represent the fees paid to Peak Strategies during FAM Period 2. CAT LLC continued to employ Peak Strategies during FAM Period 2 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 2 were paid by CAT LLC to Peak Strategies. During FAM Period 2, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public

relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(iv) Historical CAT Costs Incurred in Financial Accountability Milestone Period 3

Historical CAT Costs 1 would include costs incurred by CAT and already funded by the Participants during Period 3 of the Financial Accountability Milestones ("FAM Period 3"),⁵⁴ which covers the period from January 1, 2021–December 31, 2021. Historical CAT Costs 1 would include costs for FAM Period 3 of \$144,415,268. The

Participants would remain responsible for one-third of this cost (which they have previously paid) (\$48,138,423), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$48,138,423) and CEBBs paying one-third (\$48,138,423). The following table breaks down Historical CAT Costs 1 for FAM Period 3 into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Operating expense	Historical CAT costs for FAM Period 3 [*]
Capitalized Developed Technology Costs ^{**}	\$10,763,372
Technology Costs:	123,639,402
Cloud Hosting Services	94,574,759
Operating Fees	23,106,091
CAIS Operating Fees	5,562,383
Change Request Fees	396,169
Legal	6,333,248
Consulting	1,408,209
Insurance	1,582,714
Professional and administration	595,923
Public relations	92,400
Total Operating Expenses	144,415,268

^{*} The costs described in this table of costs for FAM Period 3 were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

^{**} The non-cash amortization of these capitalized developed technology costs of \$5,108,044 incurred during FAM Period 3 have been appropriately excluded from the above table.⁵⁵

By the completion of FAM Period 3, CAT LLC was required to implement the following requirements with regard the CAT:

(a) reporting to the Order Audit Trail System ("OATS") is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or

order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met.⁵⁶

CAT LLC completed the requirements of FAM Period 3 by December 31, 2021. The following describes the costs for each of the categories for FAM Period 3.

(a) Technology Costs—Cloud Hosting Services

CAT LLC continued to utilize AWS in FAM Period 3 to provide a broad array of cloud hosting services for the CAT, including data ingestion, data management, and analytic tools. AWS continued to provide 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, during the FAM 3 Period. Accordingly, the \$94,574,759 in technology costs for cloud hosting services represents costs incurred for services provided by AWS, as the cloud services provider, during FAM Period 3. The fee arrangement for AWS described above for the earlier periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement.

The cost for AWS cloud services for the CAT continued to be a function of the volume of CAT Data. During FAM Period 3, the volume of CAT Data continued to far exceed the original predictions for the CAT as set forth in the CAT NMS Plan. During this period, data submitted to the CAT included options and equities Participant Data, Phase 2a, Phase 2b, Phase 2c and Phase 2d Industry Member Data (including certain linkages), SIP Data, Other Data, including reference data, and LTID account information. The following chart provides data regarding the average daily volume, cumulative total events, total compute hours and storage

⁵⁴ Section 11.6(a)(i)(C) of the CAT NMS Plan.

⁵⁵ As discussed above, 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.

⁵⁶ See definition of "Full Availability and Regulatory Utilization of Transactional Database Functionality" in Section 1.1 of the CAT NMS Plan.

footprint of the CAT during FAM Period 3.⁵⁷

	Date range: 1/1/21 to 4/25/21	Date range: 4/26/21 to 12/31/21 *
Average Daily Volume in Billions:		
Participant—Equities	9	9
Participant—Options	135	136
Industry Member—Equities	20	19
Industry Member—Options	2	2
SIP—Options & Equities	129	137
Average Total Daily Volume	297	304
Cumulative Total Events for the Period	7,480	5,310
Total Compute Hours for the Period	15,860,304	33,487,318
Storage Footprint at End of Period (Petabytes)	180.22	284.62

* Start of Participant Equities in CAT format and SIP Equities on 4/26/21.

(b) Technology Costs—Operating Fees

Pursuant to the Plan Processor Agreement discussed above, FCAT continued in its role as the Plan Processor for the CAT during FAM Period 3. Accordingly, the \$23,106,091 in technology costs for operating fees represent costs incurred for the services provided by FCAT under the Plan Processor Agreement during FAM Period 3. The fee arrangement for FCAT described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, FCAT's activities with respect to the CAT included the following:

- Facilitated Phase 2c and Phase 2d testing for Industry Members;
- Oversaw creation of linkages of the lifecycle of order events based on the received data through Phase 2d;
- Addressed compliance items, including drafting CAT policies and procedures, and addressing Regulation SCI requirements;
- Provided support to the Operating Committee, the Compliance Subcommittee and CAT working groups;
- Assisted with interpretive efforts and exemptive requests regarding the CAT NMS Plan;
- Oversaw the security of the CAT;
- Monitored the operation of the CAT, including with regard to Participant and Industry Member reporting;
- Provided support to subcontractors under the Plan Processor Agreement;
- Provided support in discussions with the Participants and the SEC and its staff;
- Operated the FINRA CAT Helpdesk;
- Facilitated communications with the industry, including via FAQs, CAT

Alerts, meetings, presentations and webinars;

- Administered the CAT website and all of its content; and
- Provided 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.

(c) Technology Costs—CAIS Operating Fees

Pursuant to the Plan Processor Agreement with FCAT discussed above, Kingland continued in its role as a subcontractor for the development and implementation of CAIS during FAM Period 3. Accordingly, the \$5,562,383 in technology costs for CAIS operating fees represents costs incurred for services provided by Kingland during FAM Period 3. The fee arrangement for Kingland described above with regard to the prior Periods continued in place during FAM Period 3 pursuant to the Plan Processor Agreement. During FAM Period 3, Kingland continued the development of the CAIS Technical Specifications and building of CAIS. In addition, Kingland continued to work on the CAIS Technical Specifications and build related to the CCID Alternative, as well as the acceleration of the reporting of LTIDs. The full CAIS Technical Specifications were published during FAM Period 3.

(d) Technology Costs—Change Request Fees

During FAM Period 3, CAT LLC engaged FCAT to pursue certain change requests in accordance with the Plan Processor Agreement. The change request costs were paid by CAT LLC to FCAT. Specifically, during FAM Period 3, CAT incurred costs of \$396,169 related to change requests, including the

following: (1) the addition of functionality for exchange Participants to report rejected messages to the CAT; (2) the migration of MIRS query engine to AWS to reduce operational costs and increase resiliency; and (3) updating the Participant Technical Specifications to allow for two-sided Participant option quote reporting.

(e) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for FAM Period 3 of \$10,763,372 include capitalizable application development costs incurred in the development of the CAT by FCAT. Such costs include (1) development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Plan Processor, including the transition from equity data received by FINRA pursuant to various regulatory services agreements between FINRA and Participant exchanges to the equity CAT Data, and the completion of the Industry Member Phase 2d options manual and complex orders go-live requirements; (2) costs related to certain modifications, upgrades, or other changes to the CAT that were not contemplated by the agreement between CAT LLC and the Plan Processor, including costs related to off-exchange volume concentration, Participant 24-hour trading and an external metastore; (3) implementation fees; and (4) license fees.

(f) Legal Costs

The legal costs of \$6,333,248 represent the fees paid for legal services provided by three law firms, WilmerHale, Pillsbury and Covington &

⁵⁷ Note that the volume data described in this table does not include CAIS data.

Burling LLP (“Covington”) during FAM Period 3.

Law Firm: WilmerHale. CAT LLC continued to employ WilmerHale during FAM Period 3 based on, among other things, their expertise and long history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to WilmerHale. During FAM Period 3, the legal assistance provided by WilmerHale included providing legal advice regarding the following:

- Assisted with the development of the CAT funding model and drafting related amendments and rule filings;
- Drafted exemptive requests from CAT NMS Plan requirements, including, for example, verbal activity regarding Phase 2c cutover, error reports, error corrections, Phase 2d Reporting, unique Order-ID on internal route events, reporting addresses, recordkeeping, and unique CCID for foreign customers;
- Provided interpretations related to CAT NMS Plan requirements, including with regard to the Financial Accountability Milestone amendment, FAQs, CAIS requirements, ADF, and technical specifications;
- Provided support for the Operating Committee, Compliance Subcommittee, working groups and Leadership Team, including with regard to meetings with the SEC staff;
- Assisted with the Implementation Plan and Quarterly Progress Reports required pursuant to Section 6.6(c) of the CAT NMS Plan;
- Drafted SRO rule filings related to the CAT Compliance Rule;
- Provided support for Compliance Subcommittee, including with regard to responses to OCIE examinations and the annual assessment;
- Provided guidance regarding the SEC’s proposed security amendments to the CAT NMS Plan;
- Provided guidance regarding SRO rule filings for the retirement of systems;
- Provided legal support for Operating Committee meetings, including drafting resolutions and other materials and voting advice;
- Provided assistance with change requests;
- Provided guidance and regulatory support for litigation regarding the response to the SEC’s exemptive orders;
- Assisted with communications with the industry, including CAT Alerts and presentations;
- Provided guidance regarding the confidentiality of CAT Data, including third-party information requests;
- Assisted with cost management analysis and proposals; and

- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

Law Firm: Pillsbury. CAT LLC continued to employ Pillsbury during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this law firm were in line with market rates for specialized legal expertise. The legal fees during FAM Period 3 were paid by CAT LLC to Pillsbury. During FAM Period 3, Pillsbury provided legal assistance to the CAT regarding the CAT Reporter Agreement. During this period, Pillsbury advised CAT LLC regarding applicable legal matters, reviewed and responded to comment letters regarding the proposed Plan amendment, participated in meetings with senior SEC staff, responded to comments submitted following the SEC’s April 6, 2021 order instituting proceedings,⁵⁸ and assessed legal matters regarding the SEC’s October 29, 2021 order denying the proposed Plan amendment.⁵⁹

Law Firm: Covington. CAT LLC hired Covington for litigation with the SEC regarding certain exemptive orders related to the CAT, including orders issued in December 2020.⁶⁰ CAT LLC interviewed this law firm as well as other potential law firms, considering a variety of factors in its analysis for choosing legal assistance, including the relevant expertise and fees of the potential lawyers. CAT LLC approved the engagement of Covington in January 2021. The fee rates for this law firm, which were calculated based on hourly rates, were in line with market rates for specialized services. The legal fees for FAM Period 3 for this firm were paid by CAT LLC to Covington.

After Covington was hired in 2021 through the end of 2021, the firm provided legal assistance regarding the litigation with the SEC regarding the 2020 Orders. These services included researching, drafting, and filing motions to stay the 2020 orders and related materials in proceedings before the SEC, as well as researching, drafting, and filing petitions for judicial review of the 2020 Orders in proceedings before the U.S. Court of Appeals for the D.C. Circuit. Covington oversaw ongoing litigation proceedings on these matters, and also supported WilmerHale with

respect to settlement negotiations with the SEC staff regarding the 2020 Orders.

In addition to these services, CAT LLC engaged Covington in November 2021 to provide assistance with respect to the SEC’s disapproval of CAT NMS Plan amendments concerning a proposed limitation on liability in the event of a data breach or similar event. Covington provided advice concerning CAT’s response to the SEC’s disapproval order. This work accounted for a minority of Covington’s fees in 2021.⁶¹

(g) Consulting Costs

The consulting costs of \$1,408,209 represent the fees paid to Deloitte as project manager during FAM Period 3. CAT LLC continued to employ Deloitte during FAM Period 3 based on, among other things, their expertise and long history with the project. The fee rates for Deloitte during FAM Period 3 were negotiated and in line with market rates for this type of specialized consulting work. The consulting fees during FAM Period 3 were paid to Deloitte by CAT LLC. CAT LLC reviewed the consulting fees each month and approved the invoices. During FAM Period 3, Deloitte’s CAT-related activities included the following:

- Implemented program operations for the CAT project;
- Provided 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;
- Assisted with cost and funding matters for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided support for third-party vendors for the CAT, including FCAT, Anchin and the law firms engaged by CAT LLC.

(h) Insurance

The insurance costs of \$1,582,714 represent the fees paid for insurance during FAM Period 3. CAT LLC continued to maintain cyber security liability insurance, directors’ and officers’ liability insurance, and errors

⁵⁸ Securities Exchange Act Rel. No. 91487 (Apr. 6, 2021), 86 FR 19054 (Apr. 12, 2021).

⁵⁹ Securities Exchange Act Rel. No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

⁶⁰ See Securities Exchange Act Rel. No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020); and Securities Exchange Act Rel. No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020) (collectively, the “2020 Orders”).

⁶¹ As discussed above with regard to Pillsbury’s work on liability matters, liability issues related to the CAT are important matters that needed to be resolved and clarified. CAT LLC’s efforts to seek such resolution and clarity work to the benefit of Participants, Industry Members and other market participants. Moreover, such activity is a necessary part of the operation of the CAT.

and omissions liability insurance offered by USI. After engaging in a process for renewing the coverage, CAT LLC determined to purchase these insurance policies from USI. The annual premiums for these policies were competitive for the coverage provided. The annual premiums were paid by CAT LLC to USI.

(i) Professional and Administration Costs

The professional and administration costs of \$595,923 represent the fees paid to Anchin and Grant Thornton for financial services during FAM Period 3.

Financial Advisory Firm: Anchin. CAT LLC continued to employ Anchin during FAM Period 3 based on, among other things, their expertise and history with the project. The hourly fee rates for this firm were in line with market rates for these financial advisory services. The fees for these services during FAM Period 3 were paid by CAT LLC to Anchin. During FAM Period 3, Anchin provided a variety of services, including the following:

- Updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated *[sic]* bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;
- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Accounting Firm: Grant Thornton. CAT LLC continued to employ the

accounting firm Grant Thornton during FAM Period 3 based on, among other things, their expertise and cumulative knowledge of CAT LLC. CAT LLC determined that Grant Thornton was well qualified for its role and that its fixed fee rates were in line with market rates for these accountant services. The fees for these services during FAM Period 3 were paid by CAT LLC to Grant Thornton. During FAM Period 3, Grant Thornton provided audited financial statements for CAT LLC.

(j) Public Relations Costs

The public relations costs of \$92,400 represent the fees paid to Peak Strategies during FAM Period 3. CAT LLC continued to employ Peak Strategies during FAM Period 3 based on, among other things, their expertise and history with the project. The fee rates for this firm were in line with market rates for these types of services. The fees for these services during FAM Period 3 were paid by CAT LLC to Peak Strategies. During FAM Period 3, Peak Strategies continued to provide professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, the public relations firm provided 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). As discussed above, such public relations services were 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. By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT matters to the benefit of all market participants.

(v) Excluded Costs

Historical CAT Costs 1 would not include three categories of CAT costs ("Excluded Costs"): (1) \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor; (2) \$48,874,937, which are all CAT costs incurred from November 15,

2017 through November 15, 2018; and (3) \$19,628,791, which are costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded. The Participants would remain responsible for 100% of these costs, which total \$83,253,090. CAT LLC determined to exclude these Excluded Costs from Historical CAT Costs 1 because these costs relate to the delay in the start of reporting to the CAT and the conclusion of the relationship with the Initial Plan Processor.⁶²

(a) Costs Related to Conclusion of Relationship With Initial Plan Processor

First, Historical CAT Costs 1 would not include \$14,749,362 of costs related to the conclusion of the relationship with the Initial Plan Processor. Such costs include costs related to the American Arbitration Association, the legal assistance of Pillsbury with regard to the arbitration with the Initial Plan Processor, and the settlement costs related to the arbitration with the Initial Plan Processor. The Participants would remain responsible for 100% of these \$14,749,362 in costs.

(b) Costs Incurred From November 15, 2017 Through November 15, 2018

Second, Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018. CAT LLC determined to exclude all costs during this one-year period of \$48,874,937 from fees charged to Industry Members due to the delay in the start of reporting to the CAT. The Participants would remain responsible for 100% of these \$48,874,937 in costs. The following table breaks down these costs into the categories set forth in Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶² In approving the CAT Funding Model, the Commission states that the proposed exclusion of the first two categories of Excluded Costs "is reasonable in the Commission's view because it would not require all costs incurred by the Participants to be recovered from Industry Members through the Historical CAT Assessment, specifically excluding those costs related to the delay in the start of reporting to the CAT and costs related to the conclusion of the relationship with the Initial Plan Processor." CAT Funding Model Approval Order at 62663. In addition to the first two categories of Excluded Costs, CAT LLC is now proposing a third category of Excluded Costs that would exclude all costs paid to the Initial Plan Processor after November 15, 2018.

Operating expense	Excluded costs for November 15, 2017– November 15, 2018 *
Capitalized Developed Technology Costs	\$37,852,083
Technology Costs:	
Cloud Hosting Services	
Operating Fees	
CAIS Operating Fees	
Change Request Fees	
Legal	6,143,278
Consulting	4,452,106
Insurance	
Professional and administration	340,145
Public relations	87,325
Total Operating Expenses	48,874,937

* The costs described in this table of Excluded Costs were calculated based upon CAT LLC's review of applicable bills and invoices and related financial statements. CAT LLC financial statements are available on the CAT website.

The following provides additional detail regarding the Excluded Costs.

(I) Technology Costs—Cloud Hosting Services, Operating Fees, CAIS Operating Fees and Change Request Fees

CAT LLC did not incur technology costs related to the categories of cloud hosting services, operating fees, CAIS operating fees or change requests during the period from November 15, 2017 through November 15, 2018.

(II) Technology Costs—Capitalized Developed Technology Costs

Capitalized developed technology costs for the period from November 15, 2017 through November 15, 2018 include capitalizable application development costs of \$37,852,083 incurred in the development of the CAT by the Initial Plan Processor. Such costs include development costs incurred during the application development stage to meet various agreed-upon milestones regarding the CAT, as defined in the agreement between CAT LLC and the Initial Plan Processor. Such costs include costs related to Industry Member technical specifications for orders and transactions, the system security plan, testing and production for Participant CAT reporting, third-party security assessment and response, query portal, onboarding of the Chief Information Security Officer, and ingestion of FINRA TRF data and FINRA data related to halts and corporate actions.

(III) Legal Costs

The legal costs of \$6,143,278 represent the fees paid to WilmerHale for legal services from November 15, 2017 through November 15, 2018. During this period, WilmerHale provided legal assistance to the CAT including with regard to the following:

- Provided legal support for the governance of the CAT, including governance support for the Operating Committee, Advisory Committee, Compliance Subcommittee, and CAT working groups;
- Assisted with the development of the CAT funding model and drafted related amendments of the CAT NMS Plan;
- Provided assistance related to CAT security;
- Drafted exemptive requests, including requests related to PII;
- Assisted with the Implementation Plan required pursuant to Section 6.6(c)(i) of the CAT NMS Plan;
- Provided interpretations of and related to the CAT NMS Plan;
- Provided advice with regard to regulator access to the CAT;
- Assisted with the Plan Processor transition;
- Provided assistance regarding communications with the industry regarding the CAT;
- Provided advice regarding Customer Account Information and PII;
- Provided support for litigation related to SEC exemptive orders; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretative and implementation issues.

(IV) Consulting Costs

The consulting costs of \$4,452,106 represent the fees paid to Deloitte for their role as project manager for the CAT from November 15, 2017 through November 15, 2018. During this period, Deloitte engaged in the following activities with respect to the CAT:

- Implemented program operations for the CAT project;
- Provided governance support to the Operating Committee, including support for Subcommittees and working groups of the Operating Committee (e.g.,

Compliance Subcommittee, Cost and Funding Working Group, Technical Working Group, Industry Outreach Working Group, Security Working Group and Steering Committee);

- Assisted with cost and funding issues for the CAT, including the development of the CAT funding model and assistance with loans and the CAT bank account for CAT funding;
- Provided support for updating the SEC on the progress of the development of the CAT; and
- Provided active planning and coordination with and support for the Initial Plan Processor with regard to the development of the CAT, and reported to the Participants on the progress.

(V) Insurance

CAT LLC did not incur costs related to insurance during the period from November 15, 2017 through November 15, 2018.

(VI) Professional and Administration Costs

The professional and administration costs of \$340,145 represent the fees paid to Anchin, Exegy and RSM from November 15, 2017 through November 15, 2018.

Financial Advisory Firm: Anchin. From the commencement of its engagement [sic] in April 2018 through November 15, 2018, Anchin engaged in the following activities with respect to the CAT:

- Developed, updated and maintained internal controls;
- Provided cash management and treasury functions;
- Facilitated bill payments;
- Provided monthly bookkeeping;
- Reviewed vendor invoices and documentation in support of cash disbursements;
- Provided accounting research and consultations on various accounting, financial reporting and tax matters;

- Addressed not-for-profit tax and accounting considerations;
- Prepared tax returns;
- Addressed various accounting, financial reporting and operating inquiries from Participants;
- Developed and maintained quarterly and annual operating and financial budgets, including budget to actual fluctuation analyses;
- Addressed accounting and financial matters relating to the transition from CAT NMS, LLC to Consolidated Audit Trail, LLC, including supporting the dissolution of CAT NMS, LLC;
- Supported compliance with the CAT NMS Plan;
- Worked with and provided support to the Operating Committee and various CAT working groups;
- Prepared monthly, quarterly and annual financial statements;
- Supported the annual financial statement audits by an independent auditor;
- Reviewed historical costs from inception; and
- Provided accounting and financial information in support of SEC filings.

Market Data Provider: Exegy. From July 2018 through November 15, 2018, CAT LLC purchased market data from Exegy (as described in more detail above).

Security Assessment: RSM. From October 2018 through November 15, 2018, CAT LLC incurred costs for RSM's performance of a security assessment (as described in more detail above).

(VII) Public Relations Costs

The public relations costs of \$87,325 represent the fees paid to Sloane from November 15, 2017 through November 15, 2018. From the commencement of its engagement [*sic*] in March 2018 through November 15, 2018, Sloane provided professional communications services to CAT, including media relations consulting, strategy and execution. Specifically, Sloane provided 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).

(c) Costs Paid to Initial Plan Processor From November 16, 2018 Through February 2019

Third, Historical CAT Costs 1 would not include the \$19,628,791 in costs

paid to the Initial Plan Processor from November 16, 2018 through February 2019 when CAT LLC's relationship with the Initial Plan Processor concluded. CAT LLC determined that Historical CAT Costs 1 would not include any fees paid to the Initial Plan Processor after November 15, 2017,⁶³ which was the date by which Participants were required to begin reporting to the CAT.⁶⁴ As discussed above, the Participants determined that Historical CAT Costs 1 would not include all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Initial Plan Processor costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Initial Plan Processor costs incurred after November 15, 2018 are the \$19,628,791 in costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

(C) Historical Recovery Period 1

Under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.⁶⁵ The Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.⁶⁶ The Operating Committee has determined to establish a Historical Recovery Period 1 of 24 months for Historical CAT Assessment 1.

The Operating Committee determined that the length of Historical Recovery

⁶³ As discussed below, CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. See Section 3(a)(10)(E) below.

⁶⁴ The SEC approved the CAT NMS Plan on November 15, 2016, and Participant reporting was required to begin on the first anniversary of this date, November 15, 2017. See Section 6.3 of the CAT NMS Plan and CAT NMS Plan Approval Order.

⁶⁵ Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁶⁶ Section 11.3(b)(i)(D)(I) of the CAT NMS Plan. In the CAT Funding Model Approval Order, the SEC stated that "[i]n the Commission's view, it is reasonable for the Operating Committee to establish the length of the Historical Recovery Period to be no less than 24 months and no more than five years." CAT Funding Model Approval Order at 62664.

Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans to the Participants in a timely fashion. The Operating Committee determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.⁶⁷ In addition, in establishing a Historical Recovery Period of 24 months, the Operating Committee recognized that the total costs for Historical CAT Assessment 1 were less than the total costs for 2022 and 2023,⁶⁸ and therefore it would be reasonable and appropriate to recover costs subject to this filing over an approximate two-year period.

The length of the Historical Recovery Period 1 and the reasons for its length are provided in this filing in accordance with the requirement in the CAT NMS Plan to provide such information in a fee filing for a Historical CAT Assessment.⁶⁹

(D) Projected Total Executed Equivalent Share Volume

The calculation of Historical Fee Rate 1 also requires the determination of the projected total executed equivalent share volume of transactions in Eligible Securities for Historical Recovery Period 1. 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 Historical Recovery Period based on the executed equivalent share volume of all transactions in Eligible Securities for the prior twelve months." ⁷⁰ 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.⁷¹

The total executed equivalent share volume of transactions in Eligible

⁶⁷ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model at 62682.

⁶⁸ The total CAT costs for 2022 were approximately \$186 million and the total CAT costs for 2023 were approximately \$233 million.

⁶⁹ Section 11.3(b)(iii)(B)(II)(C) of the CAT NMS Plan.

⁷⁰ Section 11.3(b)(i)(E) of the CAT NMS Plan.

⁷¹ CAT Funding Model Approval Order at 62664.

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 the 24 months of Historical Recovery Period 1 by doubling 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.⁷²

The projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 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 Historical CAT Assessment.⁷³

(E) Historical Fee Rate 1

Historical Fee Rate 1 would be calculated by dividing Historical CAT Costs 1 by the reasonably projected total executed equivalent share volume of all transactions in Eligible Securities for Historical Recovery Period 1, as described in detail above.⁷⁴ Specifically, Historical Fee Rate 1 would be calculated by dividing \$318,059,819 by 7,961,507,681,810.42. As a result, the Historical Fee Rate 1 would be \$0.00003994969693072937 per executed equivalent share. Historical Fee Rate 1 is provided in this filing in accordance with the requirement in the CAT NMS Plan to provide the Historical Fee Rate

in a fee filing for a Historical CAT Assessment.⁷⁵

(3) Past CAT Costs and Participants

Participants would not be required to pay any fees associated with Historical CAT Assessment 1 as the Participants previously have paid all Past CAT Costs. The CAT NMS Plan explains that:

Because Participants previously have paid Past CAT Costs via loans to the Company, Participants would not be required to pay any Historical CAT Assessment. In lieu of a Historical CAT Assessment, the Participants' one-third share of Historical CAT Costs and such other additional Past CAT Costs as reasonably determined by the Operating Committee will be paid by the cancellation of loans made to the Company on a pro rata basis based on the outstanding loan amounts due under the loans.⁷⁶

The CAT NMS Plan further states that "Historical CAT Assessments are designed to recover two-thirds of the Historical CAT Costs."⁷⁷

(4) Monthly Fees

CEBBs and CEBSs would be required to pay fees for Historical CAT Assessment 1 on a monthly basis for the period in which Historical CAT Assessment 1 is in effect.⁷⁸ A CEBB 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.⁷⁹ Proposed paragraph (a)(1)(A) of the fee schedule would state that each CAT Executing Broker would receive its first invoice in November 2024, and "would receive an invoice each month thereafter in which Historical CAT Assessment 1 is in effect." Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audited Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." In addition, proposed paragraph (b)(1) of the fee schedule states that each CEBB and CEBS is required to pay its CAT fees "each month."

⁷⁵ Section 11.3(b)(iii)(B)(II)(A) of the CAT NMS Plan.

⁷⁶ Section 11.3(b)(ii) of the CAT NMS Plan.

⁷⁷ *Id.* In approving the CAT Funding Model, the Commission stated that "[t]he proposed allocation of the Historical CAT Assessment solely to CEBBs and CEBSs, and ultimately Industry Members, is reasonable. The Historical CAT Assessment will still be divided into thirds," as the Participants' one-third share of Historical CAT Costs will be paid by the cancellation of loans made to the Company. CAT Funding Model Approval Order at 62666.

⁷⁸ See Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷⁹ See proposed paragraph (a)(1)(B) of the fee schedule.

(5) Actual Recovery Period for Historical CAT Assessment 1

The CAT NMS Plan states that, "[n]otwithstanding the length of the Historical Recovery Period used in calculating the Historical Fee Rate, each Historical CAT Assessment calculated using the Historical Fee Rate will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected."⁸⁰ Accordingly, Historical CAT Assessment 1 will remain in effect until all Historical CAT Costs 1 have been collected. The actual recovery period for Historical CAT Assessment 1 may be shorter or longer than Historical Recovery Period 1 depending on the actual executed equivalent share volumes during the time that Historical CAT Assessment 1 is in effect.⁸¹

(6) Consolidated Audit Trail Funding Fees

To implement Historical CAT Assessment 1, a new section would be added to the Exchange's fee schedule for "Consolidated Audit Trail Funding Fees", and it would include the proposed paragraphs described below.

(A) Fee Schedule for Historical CAT Assessment 1

The CAT NMS Plan states that:

Each month in which a Historical CAT Assessment is in effect, each CEBB and each CEBS shall pay a 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 Historical CAT Assessment for each transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by one-third and by the Historical Fee Rate reasonably determined pursuant to paragraph (b)(i) of this Section 11.3.⁸²

Accordingly, based on the factors discussed above, the Exchange proposes to add paragraph (a)(1) to the Consolidated Audit Trail Funding Fees section of its fee schedule. Proposed paragraph (a)(1) would state the following:

(A) Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in November 2024, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in October 2024, and shall receive an invoice for Historical CAT Assessment 1 for each

⁸⁰ Section 11.3(b)(i)(D)(II) of the CAT NMS Plan.

⁸¹ In approving the CAT Funding Model, the Commission stated that, "[i]n the Commission's view, it is reasonable for Industry Members to be charged a Historical CAT Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT Funding Model Approval Order at 62665.

⁸² Section 11.3(b)(iii)(A) of the CAT NMS Plan.

⁷² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

⁷³ Section 11.3(b)(iii)(B)(II)(D) of the CAT NMS Plan.

⁷⁴ In approving the CAT Funding Model, the Commission stated that "[t]he calculation of the Historical Fee Rate by dividing the Historical CAT Costs by the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period is reasonable." CAT Funding Model Approval Order at 62664.

month thereafter in which Historical CAT Assessment 1 is in effect.

(B) Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 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 \$0.000013 per executed equivalent share.

(C) Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time. Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect.

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

As noted in the Plan amendment for the CAT Funding Model, "as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate."⁸³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 of \$0.00003994969693072937 by one-third, and rounding the result to 6 decimal places.⁸⁴ 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)(1)(A) of the fee schedule would describe when CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1. Specifically, CAT Executing Brokers would receive their first monthly invoice for Historical CAT Assessment 1 in November 2024 and the fees set forth

in that invoice would be calculated based on transactions executed in the prior month, that is, transactions executed in October 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)(1)(A) of the fee schedule also would describe the monthly cadence of the invoices for Historical CAT Assessment 1. Specifically, after the first invoices are provided to CAT Executing Brokers in November 2024, invoices will be sent to CAT Executing Brokers each month thereafter while Historical CAT Assessment 1 is in effect.

Proposed paragraph (a)(1)(B) of the fee schedule would describe the invoices for Historical CAT Assessment 1. Proposed paragraph (a)(1)(B) of the fee schedule would state that "Consolidated Audit Trail, LLC shall provide each CAT Executing Broker with an invoice for Historical CAT Assessment 1 on a monthly basis." Proposed paragraph (a)(1)(B) of the fee schedule also would describe the fees to be set forth in the invoices for Historical CAT Assessment 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 \$0.000013 per executed equivalent share."

Furthermore, proposed paragraph (a)(1)(C) of the fee schedule would describe how long Historical CAT Assessment 1 would remain in effect. It would state that "Historical CAT Assessment 1 will remain in effect until \$212,039,879.34 (two-thirds of Historical CAT Costs 1) are collected from CAT Executing Brokers collectively, which is estimated to be approximately two years, but could be for a longer or shorter period of time." This proposed paragraph would further state that "Consolidated Audit Trail, LLC will provide notice when Historical CAT Assessment 1 will no longer be in effect."

Historical CAT Assessment 1 will be assessed for all transactions executed in each month through the end of the month in which two-thirds of Historical CAT Costs 1 are assessed, and then CAT LLC will provide notice that Historical

CAT Assessment 1 is no longer in effect. Since Historical CAT Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Assessment 1 may collect more than two-thirds of Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Assessment 1 is in effect will be used to offset future fees and/or to fund the reserve for the CAT.

Finally, proposed paragraph (a)(1)(D) of the fee schedule sets forth the requirement for the CAT Executing Brokers to pay the invoices for Historical CAT Assessment 1. It would state that "[e]ach CAT Executing Broker shall be required to pay each invoice for Historical CAT Assessment 1 in accordance with paragraph (b)."

(B) Manner of Payment

Paragraph (b)(1) to the "Consolidated Audit Trail Funding Fees" section of its fee schedule describes the manner of payment of Industry Member CAT fees. Paragraph (b)(1) states 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." The CAT NMS Plan requires the Operating Committee to establish a system for the collection of CAT fees.⁸⁵ The Plan Processor has established a billing system for CAT fees.⁸⁶ Therefore, the Exchange proposes to require CAT Executing Brokers to pay Historical CAT Assessment 1 in accordance with such system.

(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;

⁸⁵ Section 11.4 of the CAT NMS Plan.

⁸⁶ 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.

⁸³ CAT Funding Model Approval Order at 62658, n.658.

⁸⁴ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. Rounding \$0.00001331656564357646 to six decimal places equals \$0.000013.

or (b) the maximum rate permitted by applicable law.⁸⁷

Accordingly, the Exchange previously has added this requirement to the Exchange's fee schedule. Specifically, paragraph (b)(2) of the fee schedule states:

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 Historical CAT Assessment 1.

(7) Historical CAT Assessment Details

The CAT NMS Plan states that:

Details regarding the calculation of a CAT Executing Broker's Historical CAT Assessment will be provided upon request to such CAT Executing Broker. At a minimum, such details would include each 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.⁸⁸

Such information would provide CEBBs and CEBs with the ability to understand the details regarding the calculation of their Historical CAT Assessment.⁸⁹ CAT LLC will provide CAT Executing Brokers with these details regarding the calculation of their Historical CAT Assessments on their monthly invoice for the Historical CAT Assessment.

In addition, CAT LLC will make certain aggregate statistics regarding Historical CAT Assessments publicly available. Specifically, the CAT NMS Plan states that, "[f]or each Historical CAT Assessment, 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 on an exchange, and (3) by buy-side transactions and sell-side transactions."⁹⁰ 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 Historical CAT Assessment 1 is in effect as well as the total amount invoiced for Historical CAT Assessment 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 Historical CAT Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Assessment 1, Industry Members would have sufficient information to reasonably track how much longer Historical CAT Assessment 1 is likely to be in place.

(8) Implementation Assistance

To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices prior to the commencement of Historical CAT Assessment 1. Specifically, CAT Executing Brokers have received mock invoices based on transaction data each month since November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee. However, no payments have been required in response to such mock invoices; they have been used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data has provided CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1.

(9) 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 Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied."⁹¹ The CAT NMS Plan further states that "in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, . . . the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4."⁹² As discussed in detail below, all applicable Financial Accountability Milestones for Historical CAT Assessment 1—that is, Period 1, Period 2 and Period 3 of the Financial Accountability Milestones—have been satisfied. Furthermore, as discussed below, this filing clearly indicates that Historical CAT Assessment 1 relates to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

(A) Period 1 of the Financial Accountability Milestones

In accordance with Section 11.6(b) of the CAT NMS Plan, Historical CAT Assessment 1 seeks to recover costs that are related to "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation and operation of the CAT from the effective date of [Section 11.6 of the CAT NMS Plan] until such time as Full Implementation of CAT NMS Plan Requirements has been achieved"⁹³ ("Post-Amendment Expenses") incurred during FAM Period 1. FAM Period 1 began on June 22, 2020, the effective date of Section 11.6 of the CAT NMS Plan, and concluded on July 31, 2020, the date of Initial Industry Member Core Equity and Options Reporting. Section 1.1 of the CAT NMS Plan defines "Initial Industry Member Core Equity and Options Reporting" as:

The reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of both: (a) equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information; and (b) options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information.

⁸⁷ Section 11.4 of the CAT NMS Plan.

⁸⁸ Section 11.3(a)(iv)(A) of the CAT NMS Plan.

⁸⁹ 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.

⁹⁰ 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.

⁹¹ Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan.

⁹² Section 11.6(b) of the CAT NMS Plan.

⁹³ Section 11.6 of the CAT NMS Plan.

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.⁹⁴ As indicated by the Participants' Quarterly Progress Report for the third quarter of 2020,⁹⁵ Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020, which is prior to the July 31, 2020 deadline.

Under the FAM Period 1 requirement of Initial Industry Member Core Equity and Options Reporting, Industry Members—excluding Small Industry Members that are not OATS reporters—were required to report two categories of data to the CAT: equities transaction data and options transaction data (both excluding Customer Account Information, Customer-ID, and Customer Identifying Information) by July 31, 2020. Pursuant to exemptive relief provided by the Commission, the Commission authorized the Participants' Compliance Rules to allow core equity reporting for Industry Members (Phase 2a) to begin on June 22, 2020 and core options reporting for Industry Members (Phase 2b) to begin on July 20, 2020.⁹⁶

In adopting the FAMs, the Commission stated that the equities transaction reporting required for FAM Period 1 "is consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Equities 2a file submission and data integrity validations.'"⁹⁷ 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.⁹⁸

The Quarterly Progress Report for the third quarter of 2020 states that "Interim Step: Production Go-Live for Equities 2a file submission and data integrity validation (Large Industry Members and Small OATS Reporters)" was completed on June 22, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of "equities transaction data, excluding Customer Account Information, Customer-ID, and Customer Identifying Information" was completed on June 22, 2020.

In adopting the FAMs, the Commission stated that the options transaction reporting required for FAM Period 1 is "consistent with the functionality that the Participants describe on the CAT NMS Plan website as 'Production Go-Live for Options 2b file submission and data integrity validations.'"⁹⁹ 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.

⁹⁴ The Quarterly Progress Reports are available at <https://www.catnmsplan.com/implementation-plan>.

⁹⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021).

⁹⁶ See Phased Reporting Exemptive Relief Order. Under the CAT NMS Plan as adopted, the Participants were required, through their Compliance Rules, to require their Large Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2018, and to require their Small Industry Members to commence reporting Industry Member Data to the Central Repository by November 15, 2019. Sections 6.7(a)(v) and (vi) of the CAT NMS Plan. The SEC granted exemptive relief from these 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.

⁹⁷ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 FR 31322, 31330 n.97 (May 22, 2020) ("FAM Adopting Release").

⁹⁸ Phased Reporting Exemptive Relief Order at 23076–78.

⁹⁹ FAM Adopting Release at 31330, n.98.

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.¹⁰⁰

The Quarterly Progress Report for the third quarter of 2020 states that “Interim Step: Production Go-Live for Options 2b file submission and data integrity validations” was completed on July 20, 2020. Accordingly, the FAM Period 1 requirement of reporting by Industry Members (excluding Small Industry Members that are not OATS reporters) of “options transaction data, excluding Customer Account Information, Customer-ID and Customer Identifying Information” was completed on July 20, 2020.

As discussed above, the Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from June 22, 2020 through July 31, 2020. The total costs for this period, as discussed above, are \$6,377,343. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remaining two-thirds, with CEBBs paying one-third (\$2,125,781) and CEBBs paying one-third (\$2,125,781).

(B) Period 2 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 2. FAM Period 2 began on August 1, 2020, and concluded on December 31, 2020, the date of the Full Implementation of Core Equity Reporting. Section 1.1 of the CAT NMS Plan defines “Full Implementation of Core Equity Reporting” as:

the point at which: (a) Industry Member reporting (excluding reporting by Small Industry Members that are not OATS reporters) for equities transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, is developed, tested, and implemented at a 5% Error Rate or less and with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, and trade reporting facilities linkage to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, excluding linkage of representative orders, from order origination through order execution or order

cancellation; and (b) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3 and Section 8.2.1 incorporates the Industry Member equities transaction data described in condition (a) and is available to the Participants and to the Commission. 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 fourth quarter of 2020,¹⁰¹ Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020.

Specifically, the Full Implementation of Core Equity Reporting requires the satisfaction of two prongs. The first prong requires Participants to have fully implemented the first phase of equities transaction reporting for Industry Members (excluding Small Industry Members that are not OATS reporters) at an Error Rate of less than 5%. In addition, equities transaction data produced by the CAT at this stage must also be sufficiently interlinked so as to permit full analysis of an order’s lifecycle across the national market, excluding full linkage of representative orders. As CAT LLC reported on its Quarterly Progress Reports, Phase 2a was fully implemented as of October 26, 2020, including intra-firm, inter-firm, national securities exchange, and trade reporting facilities linkages.¹⁰² In addition to the reporting of Phase 2a Industry Member Data as described above with regard to FAM Period 1, the following linkage data was added to the CAT as described in the Quarterly Progress Reports for the third and fourth quarter of 2020:

- “Production Go-Live for Equities 2a Intrafirm Linkage validations” was completed on 7/27/2020;¹⁰³
- “Production Go-Live for Firm to Firm Linkage validations for Equities 2a (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020; and
- “Production Go-Live for Equities 2a Exchange and TRF Linkage validations (Large Industry Members and Small OATS Reporters)” was completed on October 26, 2020.

¹⁰¹ Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰² For a description of the requirements of Phases 2a, see Phased Reporting Exemptive Relief Order.

¹⁰³ Q3 2020 Quarterly Progress Report (Oct. 20, 2021).

Furthermore, as CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2020, the average overall error rate for Phase 2a Industry Member Data was less than 5% as of December 31, 2020. The average overall error rate was calculated by dividing the compliance errors by processed records.

The second prong of this FAM requires that the equities transaction data collected by the CAT at this stage be made available to regulators through two basic query tools required by the CAT NMS Plan—a targeted query tool that will enable regulators to retrieve data via an online query screen with a variety of predefined selection criteria, and a user-defined direct query tool that will provide regulators with the ability to query data using all available attributes and data sources.¹⁰⁴ As CAT LLC reported on its Quarterly Progress Reports, the query tool functionality incorporating the data from Phase 2a was available to the Participants and the Commission as of December 31, 2020.¹⁰⁵

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹⁰⁶

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for the Company in connection with the development, implementation and operation of the CAT during the period from August 1, 2020 through December 31, 2020. The total costs for this period, as discussed above, are \$42,976,478. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain [*sic*] two-thirds, with CEBBs paying one-third (\$14,325,492.70) and

¹⁰⁴ Section 6.10(c)(i)(A) of the CAT NMS Plan requires the Plan Processor to “provide Participants and the SEC with access to all CAT Data stored in the Central Repository” via an “online targeted query tool.” Appendix D, Sections 8.1.1–8.1.3 of the CAT NMS Plan describes the required functionality associated with this regulatory tool. Appendix D, Section 8.2.1 describes the required functionality associated with a user-defined direct query tool that will “deliver large sets of data that can then be used in internal surveillance or market analysis applications.”

¹⁰⁵ See Q3 2020 Quarterly Progress Report (Oct. 30, 2020); Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021); and Q4 2020 Quarterly Progress Report (Jan. 29, 2021).

¹⁰⁶ Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) (“Settlement Exemptive Order”).

¹⁰⁰ Phased Reporting Exemptive Relief Order at 23078.

CEBSs paying one-third (\$14,325,492.70).

(C) Period 3 of the Financial Accountability Milestones

Historical CAT Assessment 1 seeks to recover costs that are related to Post-Amendment Expenses incurred during FAM Period 3. FAM Period 3 began on January 1, 2021, and concluded on December 31, 2021, the date of the Full Availability and Regulatory Utilization of Transactional Database Functionality. Section 1.1 of the CAT NMS Plan defines “Full Availability and Regulatory Utilization of Transactional Database Functionality” as:

the point at which: (a) reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders; (b) Industry Member reporting for equities transactions and simple electronic options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with sufficient intra-firm linkage, inter-firm linkage, national securities exchange linkage, trade reporting facilities linkage, and representative order linkages (including any equities allocation information provided in an Allocation Report) to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, is developed, tested, and implemented at a 5% Error Rate or less; (c) Industry Member reporting for manual options transactions and complex options transactions, excluding Customer Account Information, Customer-ID, and Customer Identifying Information, with all required linkages to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any options allocation information provided in an Allocation Report, is developed, tested, and fully implemented; (d) the query tool functionality required by Section 6.10(c)(i)(A) and appendix D, Sections 8.1.1–8.1.3, Section 8.2.1, and Section 8.5 incorporates the data described in conditions (b)-(c) and is available to the Participants and to the Commission; and (e) the requirements of Section 6.10(a) are met. 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 fourth quarter of 2021,¹⁰⁷ Full Availability and Regulatory Utilization of Transactional Database

Functionality was completed on schedule by December 31, 2021.

Specifically, the “Full Availability and Regulatory Utilization of Transactional Database Functionality” requires the satisfaction of five prongs. The first prong requires that reporting to the Order Audit Trail System (“OATS”) is no longer required for new orders. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021,¹⁰⁸ FINRA retired OATS effective September 1, 2021.¹⁰⁹ Accordingly, after the retirement of OATS, reporting to OATS was no longer required.

In addition to Phase 2a and Phase 2b Industry Member Data, the second and third prongs of “Full Availability and Regulatory Utilization of Transactional Database Functionality” require Industry Member reporting of Phase 2c Industry Member Data and Phase 2d Industry Member Data. 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 orders(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.¹¹⁰

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.¹¹¹

¹⁰⁸ *Id.*

¹⁰⁹ Securities Exchange Act Rel. No. 92239 (June 23, 2021), 86 FR 34293 (June 29, 2021).

¹¹⁰ Phase Reporting Exemptive Relief Order at 23078–79.

¹¹¹ *Id.* at 23079.

¹⁰⁷ Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

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.¹¹²

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 will include 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).¹¹³

The Quarterly Progress Report for the fourth quarter of 2021 states that "Phase 2a was fully implemented as of October 26, 2020;" "Phase 2b was fully implemented as of January 4, 2021;" "Phase 2c was implemented as of April 26, 2021;" and "Phase 2d was fully implemented as of December 13, 2021."¹¹⁴ The Quarterly Progress Reports for 2021 provide additional detail regarding the implementation of these steps including the following:

- "Production Go-Live for Equities 2c reporting requirements (Large Industry Members)" was completed on April 26, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b and 2c (Large Industry Members)" was completed on April 26, 2021;
- "FCAT Plan Processor creates linkages of the lifecycle of order events based on the received data through Phase 2d Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Large Industry Members)" was completed on December 13, 2021;
- "Production Go-Live for Options 2b reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Equities 2c reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "Production Go-Live for Options 2d reporting requirements (Small OATS Reporters and Small Non-OATS Reporters)" was completed on December 13, 2021;
- "LTID Account Information Reporting Go-Live for Phases 2d (Large Industry Members)" was completed on December 13, 2021; and
- "LTID Account Information Reporting Go-Live for Phases 2a, 2b, 2c

and 2d (Small Industry Members)" was completed on December 13, 2021.¹¹⁵

The third prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" also imposes an Error Rate requirement of 5% or less. The Quarterly Progress Report for the fourth quarter of 2021 states the average overall error rate was less than 5% as of December 31, 2021. The average overall error rate was calculated by dividing the compliance errors by processed records.

The fourth prong of "Full Availability and Regulatory Utilization of Transactional Database Functionality" requires that the data collected by the CAT at this stage be made available to regulators through an online targeted query tool and a user-defined direct query tool. As CAT LLC reported on its Quarterly Progress Report for the fourth quarter of 2021, 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, 2021.¹¹⁶

The fifth prong requires the requirements of Section 6.10(a) of the CAT NMS Plan to have been met. Section 6.10(a) of the CAT NMS Plan requires the Participants to use the tools described in appendix D to "develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository." The Exchange implemented a surveillance system, or enhanced existing surveillance systems, reasonably designed to make use of the consolidated information contained in the Central Repository as of December 31, 2021 in accordance with Section 6.10(a) of the CAT NMS Plan.¹¹⁷

The Commission has determined that the Participants have sufficiently complied with the conditions set forth in the 2020 Orders and with the technical requirements for Quarterly Progress Reports set forth in Section 6.6(c) of the CAT NMS Plan for purposes of determining compliance with this FAM.¹¹⁸

As discussed above, Historical CAT Costs 1 to be recovered via Historical CAT Assessment 1 would include fees, costs and expenses incurred by or for

¹¹⁵ See Q2 2021 Quarterly Progress Report (July 27, 2021); and Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁶ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁷ See Q1 2021 Quarterly Progress Report (Apr. 30, 2021); Q2 2021 Quarterly Progress Report (July 27, 2021); Q3 2021 Quarterly Progress Report (Nov. 1, 2021); Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹⁸ Settlement Exemptive Order at 77129 n.13.

¹¹³ *Id.* at 23079–80.

¹¹⁴ See Q4 2021 Quarterly Progress Report (Jan. 17, 2022).

¹¹² *Id.*

the Company in connection with the development, implementation and operation of the CAT during the period from January 1, 2021 through December 31, 2021. The total costs for this period, as discussed above, are \$144,415,268. Participants would remain responsible for one-third of this cost (which they have previously paid), and Industry Members would be responsible for the remain *[sic]* two-thirds, with CEBBs paying one-third (\$48,138,422.70) and CEBBs paying one-third (\$48,138,422.70).

(D) Additional Considerations related to the Financial Accountability Milestones

As discussed above, CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹¹⁹ As discussed below, none of the circumstances related to NIA Electronic RFQ Responses, the 2023 Verbal Quotes Exemption, the November 2023 Order, or Executing Broker reporting, affect the conclusion that the FAMs for Periods 1 through 3 were satisfied in a timely fashion.

(i) NIA Electronic RFQ Responses

CAT LLC does not believe that the exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”) affect the conclusion that FAMs 1 through 3 have been satisfied. The only reason CAT LLC pursued this relief is because certain Industry Members introduced concerns that NIA Electronic RFQ Responses could be considered “orders” reportable pursuant to Rule 613(j)(8) and some Industry Members were not prepared to report such orders to CAT. Thus, the relief was requested on behalf of Industry Members. CAT LLC itself has not taken any position on whether NIA Electronic RFQ Responses are “orders,” as the definition of “order” is an SEC rule and the trading processes for NIA Electronic RFQ Responses are the Industry Members’, not those of the Participants or CAT LLC. Accordingly, CAT LLC stated in its letter that “Industry Members must determine whether trading interest falls within the definition of an ‘order’ for CAT purposes. To the extent an NIA Electronic RFQ Response is not considered an ‘order’ as defined in Rule

613(j)(8) and the CAT NMS Plan, it would not be reportable to CAT.”¹²⁰

Only “orders” as defined in SEC Rule 613(j)(8) are reportable to CAT. There is no agreement across the industry or among regulators as to whether NIA Electronic RFQ Responses are “orders” reportable to CAT. Certain Industry Members have raised the question as to whether NIA Electronic RFQ Responses are orders, but others have argued that they are not orders under Rule 613(j)(8).¹²¹ Indeed, members of the Advisory Committee, which CAT LLC relies upon for guidance with regard to Industry Member issues, have not had a definitive view on whether NIA Electronic RFQ Responses are orders. As Rule 613(j)(8) is an SEC rule, CAT LLC believes that only the SEC can provide a definitive determination as to if, and under what circumstances, an NIA Electronic RFQ Response is considered an “order” reportable to CAT. The issue has persisted for some time. As a result, CAT LLC filed an exemptive request regarding NIA Electronic RFQ Responses for clarity on the interpretive issue. As recently as April 2024, Industry Members have re-raised this issue stating that the SEC agrees that it must provide additional guidance on this interpretive issue to resolve the CAT reporting issue for NIA Electronic RFQ Responses:

As further discussed in the prior FIF letters, even if the Commission had the legal authority to require the reporting of NIA RFQ responses to CAT without an amendment to Rule 613, the Commission has not provided guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT. In subsequent discussions with industry members, Commission representatives have agreed that, prior to NIA RFQ responses being reportable to CAT, it would be necessary for the Commission to provide further guidance to industry members as to the conditions under which NIA RFQ responses would be reportable to CAT.¹²²

On May 20, 2024, the Commission granted CAT LLC’s request for exemptive relief from certain CAT reporting requirements pertaining to NIA Electronic RFQ Responses to the extent such responses are considered “orders” reportable pursuant to Rule 613(j)(8).¹²³ The Commission, however,

did not provide additional guidance regarding the conditions under which NIA Electronic RFQ Responses would be reportable to CAT. The Commission stated in its exemptive order that “[t]o the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹²⁴

When the Commission proposed the FAMs, the Participants expressed concern that, “by conditioning the ability of CAT LLC and the Participants to collect Post-Amendment Industry Member Fees on factors dependent on the efforts of Industry Members, the Commission’s proposals inadvertently establish a perverse incentive for Industry Members to devote less than maximum efforts to comply with their obligations related to the CAT as they will pay less fees in such instances.”¹²⁵ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or concerns,” but that, “[f]aced with financial penalties for missed deadlines, the Participants may not be able to fully address legitimate industry concerns or accommodate requests for delays with respect to future deadlines.”¹²⁶ CAT LLC has engaged in good faith to help address NIA Electronic RFQ Responses and other concerns relevant to the ability of Industry Members to meet their CAT reporting obligations. CAT LLC should not be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members.

(ii) 2023 Verbal Quotes Exemption

CAT LLC does not believe that the Commission’s May 19, 2023 order granting temporary exemptive relief relating to certain verbal floor activity and unstructured verbal and electronic upstairs activity (the “2023 Verbal Quotes Exemption”) affects the conclusion that FAMs 1 through 3 have been satisfied. The 2023 Verbal Quotes Exemption, which was issued on May 19, 2023, is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. The relevant exemption for this time period is the Commission’s

¹¹⁹ In May 2020, the Commission adopted amendments to the CAT NMS Plan that establish four Financial Accountability Milestones and set target deadlines by which these milestones must be achieved. These amendments also reduce the amount of any fees, costs, and expenses that may be recovered from Industry Members if the Participants fail to meet the target deadlines. FAM Adopting Release.

¹²⁰ See Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

¹²¹ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (Apr. 25, 2024).

¹²² *Id.*

¹²³ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 FR 45715 (May 23, 2024).

¹²⁴ *Id.* at n.11.

¹²⁵ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

¹²⁶ *Id.* at 10.

November 12, 2020 order, which granted relief for the same activity through July 31, 2023 (the “2020 Verbal Quotes Order”).¹²⁷ The Commission has stated that, “to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied.”¹²⁸ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁹

(iii) November 2023 Order

CAT LLC does not believe that the Commission’s November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the “November 2023 Order”) affects the conclusion that FAMs 1 through 3 have been satisfied. The November 2023 Order is not relevant for purposes of FAM Periods 1 through 3, which only cover the period through December 31, 2021. As described in the November 2023 Order, the relevant exemptive orders for this time period were issued on December 16, 2020, which also states that “the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones.”¹³⁰ The November 2023 Exemption Order is consistent with the Commission’s repeated statements in

the FAM adopting release that it would have “authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone,” citing Section 36 of the Exchange Act and Rule 608.¹³¹ Similarly, the CAT NMS Plan expressly contemplates the Commission’s ability to grant exemptive relief from any CAT NMS Plan requirement.¹³²

(iv) Executing Broker Reporting

CAT LLC also completed the requirements of FAM Period 2, including the required linkages, by December 31, 2020. Although Participant exchanges may report the Executing Broker to CAT differently in certain situations, these reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage.

(10) Additional Support for Reasonableness of Historical CAT Costs

The CAT Funding Model approved by the Commission permits the recovery of reasonable costs in each of the categories of CAT costs sought to be recovered via Historical CAT Assessment 1.¹³³ As described in detail above and in further detail below, the CAT costs to be recovered for each category are reasonable. The following discusses in further details how each of the following costs are reasonable: (1) costs incurred prior to the effective date of the CAT NMS Plan; (2) cloud hosting services costs; (3) costs related to funding model filings; (4) costs related to litigation with the SEC regarding the CAT NMS Plan; (5) costs related to the

Initial Plan Processor; (6) CAIS implementation costs; (7) public relations costs; (8) legal costs related to the limitation of liability provision in the CAT Reporter agreements; and (9) costs for the Chair of CAT Operating Committee. As discussed in detail below, each of these costs is reasonable and should be recoverable in accordance with the CAT Funding Model.

(A) Costs Incurred Prior to the Effective Date of CAT NMS Plan

CAT LLC believes that it is reasonable to seek recovery of costs incurred prior to when the CAT NMS Plan became effective in November 2016, such as legal and consulting fees incurred to create the CAT NMS Plan. Rule 613 specifically mandates that the CAT be created, implemented and maintained, and further provides that the CAT NMS Plan include a proposed allocation of estimated costs to fund the creation, implementation and maintenance of the CAT among the Participants (referred to as “plan sponsors”), and between the Participants and Industry Members (referred to as “members of the plan sponsors”).¹³⁴ Consistent with Rule 613, the CAT NMS Plan, as approved by the Commission, specifically authorizes charging Industry Members fees for costs reasonably incurred prior to the date of the approval of the CAT NMS Plan by the Commission in November 2016, including legal and consulting costs. Section 11.1(c) of the CAT NMS Plan states that:

[i]n determining fees on Participants and Industry Members the Operating Committee shall take into account fees, costs and expenses (including legal and consulting fees and expenses) reasonably incurred by Participants on behalf of the Company prior to the Effective Date in connection with the creation and implementation of the CAT.

Accordingly, the CAT NMS Plan specifically permits the recovery of costs, including legal and consulting costs, reasonably incurred prior to November 2016 in connection with the creation and implementation of the CAT.

Furthermore, the costs incurred to create and implement the CAT prior to the effective date of the CAT NMS Plan (“Pre-Formation Costs”) were reasonable both in scope and amount, in accordance with the requirements of Section 11.1(c) of the CAT NMS Plan. During the four-year period from 2012 to 2016, a total of \$13,842,881 in Pre-Formation Costs were incurred. This is an average of approximately \$3.5

¹²⁷ Securities Exchange Act Rel. No. 90405, 85 FR 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁸ See, e.g., Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 FR 36631, 36633 (June 17, 2020). The straightforward reading of the Commission’s statement is that compliance with the conditions of an exemption will be measured as of the deadline for a particular FAM Period.

¹²⁹ As a condition to the 2020 Verbal Quotes Exemption, the Commission required that the Participants provide a written status update on the reporting of these quotes and orders by July 31, 2022, including the estimated costs of reporting these quotes and orders and an implementation plan for the reporting of these quotes and orders. As noted, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption were satisfied as of December 31, 2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3. In any event, on June 3, 2022, the Participants provided the required written status update. See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (June 3, 2022).

¹³⁰ *Id.* at 77129 n.12.

¹³¹ FAM Adopting Release at 31335 (May 22, 2020). Section 36 of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. 78mm(a)(1). Under Rule 608(e) of Regulation NMS, the Commission may “exempt from [Rule 608], either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanism of, a national market system.” 17 CFR 242.608(e).

¹³² Section 12.3 of the CAT NMS Plan (“[T]o the extent the SEC grants exemptive relief applicable to any provision of this Agreement, Participants and Industry Members shall be entitled to comply with such provision pursuant to the terms of the exemptive relief so granted at the time such relief is granted irrespective of whether this Agreement has been amended.”)

¹³³ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹³⁴ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

million per year over this period. The Pre-Formation Costs fell into three categories: legal costs, consulting costs and public relations costs. This includes legal costs of \$3,196,434; consulting costs of \$10,589,273; and public relations costs of \$57,174. The legal, consulting and public relations services were performed by WilmerHale, Deloitte and Peppercomm, respectively. The selection considerations and fees for these three firms are described in detail above and are described further below. The Pre-Formation Costs are direct costs of CAT, which have been funded entirely by the Participants through non-interest-bearing notes. The Pre-Formation Costs do not include the significant costs incurred by each of the individual Participants in responding to the adoption of Rule 613.

The Pre-Formation Costs are reasonable and appropriate as they reflect the extensive efforts that were necessary to create the CAT NMS Plan as mandated after the SEC's adoption of Rule 613. As described in more detail below, these efforts included, among other things, developing a plan for selecting the Plan Processor, soliciting and evaluating bids, engaging a diverse set of market participants and the SEC in the development of the Plan, interacting with the SEC in their oversight of the development of the Plan, and seeking appropriate exemptive relief to address areas of concern in Rule 613.¹³⁵

(i) Request for Proposal ("RFP")

The Participants determined to utilize an RFP to ensure that potential alternative solutions for creating the Plan could be presented and considered, and that a detailed and meaningful cost-benefit analysis could be performed. The SEC supported the use of an RFP, and approved its use as it is described in extensive detail in the CAT NMS Plan.¹³⁶

In the context of the SEC's adoption of Rule 613, commenters urged the Commission to utilize an RFP process to assist in the planning and design of the

NMS plan.¹³⁷ Specifically, the Commission explained:

In this regard, several commenters suggested that the Commission undergo a RFP or request for information ("RFI") process to create and implement a consolidated audit trail. Specifically, FIF urged the Commission to perform a RFP process "to determine the best technical solution for developing a consolidated audit trail." FIF suggested that the Commission "should outline a set of goals and guiding principles they are striving to achieve as part of the adopted CAT filing and leave the determination of data elements and other technical requirements to [an] industry working group." Similarly, Direct Edge suggested that Commission staff should form and engage in a working group to develop an RFP for publication by the Commission. DirectEdge explained that an RFP process would facilitate the identification of the costs and benefits of the audit trail, as well as the consideration of a wider range of technological solutions. Further, commenters, including Broadridge Financial Solutions, Inc., a technology provider, also requested more specific information about the audit trail system to better assess the Commission's initial cost estimates and to determine the best approach to the consolidated audit trail.¹³⁸

In response to these comments, the Commission modified Rule 613 to require the Participants to address certain important considerations regarding the features and details of the NMS plan and to extend the timeframe for submission of the CAT NMS Plan by the Participants from the 90 days as originally proposed to 270 days, in part, to accommodate a process that would address these considerations.¹³⁹ As the SEC noted, "[i]n light of the numerous specific requirements of Rule 613, the Participants concluded that publication of a request for proposal ('RFP') was necessary to ensure that potential alternative solutions to creating the consolidated audit trail can be presented and considered by the Participants and that a detailed and meaningful cost/benefit analysis can be performed, both of which are required considerations to be addressed in the CAT NMS Plan."¹⁴⁰

¹³⁷ For example, in its comments on proposed Rule 613, FIF suggested "that the SROs should select the processor through a 'request for proposal.'" Rule 613 Adopting Release at 45785.

¹³⁸ Rule 613 Adopting Release at 45738–39.

¹³⁹ Rule 613 Adopting Release at 45739.

¹⁴⁰ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 FR 11152, 11152 (Feb. 27, 2014) ("Selection Plan Approval Order").

The SEC specifically recognized that the Participants planned to use an RFP when it approved the Selection Plan, and stated that the RFP was a reasonable approach.¹⁴¹ As the SEC described in its approval order for the Selection Plan, "[t]he Participants filed the [Selection] Plan to govern how the SROs will proceed with formulating and submitting the CAT NMS Plan—and, as part of that process, how to review, evaluate, and narrow down the bids submitted in response to the RFP ('Bids')—and ultimately choosing the plan processor that will build, operate, and maintain the consolidated audit trail ('Plan Processor')." ¹⁴² After evaluating the Selection Plan, including the use of an RFP process, the Commission stated that it "believes the [Selection] Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail."¹⁴³

On February 26, 2013, the Participants published an RFP soliciting bids from parties interested in serving as the plan processor for the CAT. Initially, 31 firms submitted intentions to bid. In the following months, the Participants engaged with potential bidders with respect to, among other things, the selection process, selection criteria, and potential bidders' questions and concerns. On March 21, 2014, the Participants received ten bids in response to the RFP.

(ii) Selection Plan

On September 4, 2013, the Participants filed with the Commission a national market system plan to govern the process for Participant review of the bids submitted in response to the RFP, the procedures for evaluating the bids, and, ultimately, selection of the plan processor (the "Selection Plan").¹⁴⁴ The Commission approved the Selection Plan as filed on February 21, 2014.¹⁴⁵ In approving the Selection Plan, the Commission concluded that "it is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor."¹⁴⁶

The Selection Plan divided the review and evaluation of bids, and the selection

¹⁴¹ *Id.*

¹⁴² *Id.* at 11153

¹⁴³ *Id.* at 11159.

¹⁴⁴ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 FR 69910 (Nov. 21, 2013).

¹⁴⁵ See Selection Plan Approval Order.

¹⁴⁶ Selection Plan Approval Order at 11160.

¹³⁵ The Participants described in detail the process for drafting the CAT NMS Plan in its original filing of the CAT NMS Plan. See Letter from Mike Simon, on behalf of the Participants of the CAT NMS Plan, to Brent J. Fields, Secretary, Commission (Sept. 30, 2014). A non-exclusive list of filings and activities associated with CAT, including certain pre-2016 filings, are available on the SEC's website: <https://www.sec.gov/divisions/marketreg/rule613-info>.

¹³⁶ See detailed discussion of RFP questions in appendix C of the CAT NMS Plan, and incorporation of RFP requirements in appendix D at D-2.

of the plan processor, into various stages. Specifically, pursuant to the Selection Plan, a selection committee reviewed all bids and determined which bids contained sufficient information to allow the Participants to meaningfully assess and evaluate the bids. The ten submitted bids were deemed “Qualified Bids,” and so passed to the next stage, in which each bidder presented its bids to the Participants on a confidential basis. On July 1, 2014, after conducting careful analysis and comparison of the bids, the Selection Committee voted and selected a shortlist of six eligible bidders. The Selection Committee determined which shortlisted bidders would be provided the opportunity to revise their bids. After the Selection Committee assessed and evaluated the revised bids, the Selection Committee selected the plan processor via two rounds of voting by the Participants, as described in the Selection Plan.

The Selection Plan established an Operating Committee responsible for formulating, drafting, and filing with the Commission the CAT NMS Plan and for ensuring that the Participants’ joint obligations under Rule 613 were met in a timely and efficient manner. In formulating the CAT NMS Plan, the Participants also engaged multiple persons across a wide range of roles and expertise, engaged the consulting firm Deloitte as project manager, and engaged the law firm WilmerHale to serve as legal counsel in drafting the Plan. Within this structure, the Participants focused on, among other things, comparative analyses of the proposed technologies and operating models, development of funding models to support the building and operation of the CAT, and detailed review of governance considerations. Given the complexity and scope of developing the CAT NMS Plan, these efforts were extensive.

When it approved the CAT NMS Plan in 2016, the Commission reiterated its belief that the Selection Plan remains a “reasonable approach,” that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue”:

In approving the Selection Plan, the Commission stated that the Selection Plan is reasonably designed to achieve its objective of facilitating the development of the CAT NMS Plan and the selection of the Plan Processor. The Commission also found that the Selection Plan is reasonably designed to govern the process by which the SROs will formulate and submit the CAT NMS Plan, including the review, evaluation, and

narrowing down of Bids in response to the RFP, and ultimately choosing the Plan Processor that will build, operate, and maintain the consolidated audit trail. The Commission believes that the process set out in the Selection Plan for selecting a Plan Processor remains a reasonable approach, which will facilitate the selection of Plan Processor through a fair, transparent and competitive process and that no modifications to the Selection Plan are required to meet the approval standard. . . . In response to the comment that offered support for a specific Bidder, the Commission agrees with the Participants that the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor and thus believes that the process set forth in the Selection Plan should be permitted to continue.¹⁴⁷

(iii) Engagement With Market Participants and SEC

During the process of developing the CAT NMS Plan, the Participants engaged in extensive and meaningful dialogue with market participants and the SEC. To this end, the Participants created a website to update the public on the progress of the CAT NMS Plan, published a request for comment on multiple issues related to the Plan, held multiple public events to inform the industry of the progress of the CAT and to address inquiries, and formed, and later expanded, a DAG to solicit more input from a representative industry group.¹⁴⁸

The DAG included representatives of Participants and Industry Members and conducted meetings to discuss, among other things, technical and operational aspects the Participants were considering for the Plan. The Participants issued press releases soliciting participants for the DAG, and a wide spectrum of firms was deliberately chosen to provide insight from various industry segments affected by CAT. The DAG meetings included discussions of topics such as option market maker quote reporting, requirements for capturing Customer IDs, timestamps and clock synchronization, reporting requirements for order handling scenarios, costs and funding, error handling and corrections, and potential elimination of systems made redundant by the CAT. From the inception of the DAG through September 2014, the DAG participated in 36 meetings, as well as a variety of DAG subcommittee meetings.

¹⁴⁷ See CAT NMS Plan Approval Order at 84737.

¹⁴⁸ See Section D(11) of appendix C of the CAT NMS Plan.

(iv) Request for Exemption From Certain Requirements Under Rule 613

Following multiple discussions between the Participants and both the DAG and the bidders, as well as among the Participants themselves, the Participants recognized that some provisions of Rule 613 would not permit certain solutions to be included in the Plan that the Participants, in coordination with the DAG, determined advisable to effectuate the most efficient and cost-effective CAT. Specifically, “the SROs reached the conclusion that additional flexibility in certain of the minimum requirements specified in Rule 613 would allow them to propose a more efficient and cost-effective approach without adversely affecting the reliability or accuracy of CAT Data, or its security and confidentiality.”¹⁴⁹ Consequently, the Participants submitted a request for exemptive relief from certain provisions of Rule 613 regarding: (1) options market maker quotes; (2) Customer-IDs; (3) CAT-Reporter-IDs; (4) CAT-Order-IDs on allocation reports; and (5) timestamp granularity.¹⁵⁰ The Participants filed two supplements to the request for exemptive relief.¹⁵¹

After reviewing the exemptive request, the Commission determined that it was appropriate in the public interest and consistent with the protection of investors to grant the requested exemptive relief.¹⁵² In granting the exemptive relief, the Commission stated:

[T]he Commission is persuaded to provide flexibility in the discrete areas discussed in the Exemption Request so that the alternative approaches can be included in the CAT NMS Plan and subject to notice and comment. Doing so could allow for more efficient and cost-effective approaches than otherwise would be permitted. The Commission at this stage is not deciding whether the proposed approaches detailed below are more efficient or effective than those in Rule 613. However, the Commission believes the proposed approaches should be within the permissible range of alternatives available to the SROs.¹⁵³

The Commission further stated that the requested exemptive relief is consistent with the protection of investors. The Commission noted that:

¹⁴⁹ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 FR 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

¹⁵⁰ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

¹⁵¹ See Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Apr. 3, 2015); Letter from the SROs to Brent J. Fields, Secretary, Commission (Sept. 2, 2015).

¹⁵² See 2016 Exemptive Order.

¹⁵³ *Id.* at 11857.

Doing so will provide the public an opportunity to consider and comment on whether these proposed alternative approaches would indeed be more efficient and cost-effective than those otherwise required by Rule 613, and whether such approaches would adversely affect the reliability or accuracy of CAT Data or otherwise undermine the goals of Rule 613. Moreover, if—as the SROs represent—efficiency gains and cost savings would result from including the proposed approaches in the CAT NMS Plan without adverse effects, then the resultant benefits could potentially flow to investors (e.g., lower broker-dealer reporting costs resulting in fewer costs passed on to Customers).¹⁵⁴

The Participants incorporated the exemptive relief into the proposed CAT NMS Plan, which was noticed for comment, and the Commission ultimately approved the CAT NMS Plan with the more efficient and cost-effective alternative approaches described in the exemptive relief. Accordingly, the Participants believe that the costs incurred in developing the exemptive request were critical to the creation of a better CAT than was originally contemplated by Rule 613, and therefore should be recoverable as part of Historical CAT Assessment 1.

(v) Request for Extensions for Filing the CAT NMS Plan

Rule 613(a)(1) under Regulation NMS required the Participants to jointly file the CAT NMS Plan on or before April 28, 2013, less than a year after the adoption of Rule 613. In recognition of the complexity of the project to create the CAT NMS Plan as well as industry interest in limiting or eliminating certain requirements of Rule 613 (e.g., addressing the reporting of options market maker quotes), the Participants requested two extensions of the deadline to file the CAT NMS Plan. The Participants described the need for additional time as follows:

The SROs stated in their Request Letter that they do not believe that the 270-day time period provided for in Rule 613(a)(1) provides sufficient time for the development of the RFP, formulation and submission of bids, and review and evaluation of such bids. The SROs also stated that they believe additional time beyond the 270 days provided for in Rule 613(a)(1) is necessary in order to provide sufficient time for effective consultation with and input from the industry and the public on the proposed solution chosen by the SROs for the creation of the consolidated audit trail at the conclusion of the RFP process and the NMS plan itself.¹⁵⁵

In recognition of the need for additional time to refine the technical description of and requirements for the CAT and to allow for additional evaluation of the proposed cost and funding considerations, the SEC granted two extensions of this deadline.¹⁵⁶ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.¹⁵⁷ In reaching this conclusion, the Commission stated that “it understands that the creation of a consolidated audit trail is a significant undertaking and that a proposed NMS plan must include detailed information and discussion about many things.”¹⁵⁸ The SEC also noted the following:

This additional time to complete the RFP process should allow the SROs to engage in a more thoughtful and comprehensive process for the development of an NMS plan. In this regard, the Commission notes that the additional time to solicit comment from the industry and the public at certain key points in the development of the NMS plan could identify issues that can be resolved earlier in the development of the consolidated audit trail and prior to filing the NMS plan with the Commission.¹⁵⁹

Given the Commission’s recognition of the reasonableness and value of the extension of the deadline to file the CAT NMS Plan, the Participants believe that the costs incurred in developing the extension request were important to the process of developing the CAT NMS Plan, and therefore should be recoverable as part of Historical CAT Assessment 1.

(vi) Submission and Approval of the CAT NMS Plan

After extensive analyses and discussions with the DAG, bidders, market participants and the SEC staff, the Participants finalized the draft of the CAT NMS Plan and filed the CAT NMS Plan with the SEC on September 30, 2014. Following additional discussions, the Participants filed several amendments to the CAT NMS Plan during 2015 and 2016. With these additional changes, the SEC published the CAT NMS Plan for notice and comment in May 2016.¹⁶⁰ Following the comment period, the SEC approved the Plan in November 2016.¹⁶¹

¹⁵⁶ See March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 FR 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

¹⁵⁷ March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

¹⁵⁸ March 2013 Exemptive Order at 15772.

¹⁵⁹ *Id.* at 15773.

¹⁶⁰ See Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

¹⁶¹ See CAT NMS Plan Approval Order.

(vii) Legal Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include legal costs of \$3,196,434. The legal services were performed by WilmerHale. The selection considerations and fees for WilmerHale were described in detail above. Prior to the creation of CAT LLC, WilmerHale was engaged to represent the consortium of SROs, not the individual Participants. For administrative purposes, FINRA agreed to receive such legal bills, although such costs were shared among the Participants. Therefore, the legal costs incurred with respect to WilmerHale do not include legal costs incurred by the individual Participants. These pre-formation legal costs are described in detail above and are further described below:

- Analyzed various legal matters associated with the Selection Plan and drafted an amendment to Selection Plan;
- Assisted with the RFP and bidding process for the CAT Plan Processor;
- Analyzed legal matters related to the DAG;
- Drafted the CAT NMS Plan, analyzed various items related to the CAT NMS Plan, and responded to comment letters on the CAT NMS Plan;
- Provided legal support for the formation of the legal entity, the governance of the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG, and governance support during the transition to the new governance structure under the CAT NMS Plan;
- Drafted exemptive requests;
- Provided interpretations related to the CAT NMS Plan;
- Provided support with regard to discussions among the exchanges, FINRA and other third parties, such as Deloitte;
- Provided tax advice with regard to CAT’s status as a tax-exempt organization; and
- Provided support with regard to discussions with the SEC and its staff, including with respect to addressing interpretive and implementation issues.

(viii) Consulting Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include consulting costs of \$10,589,273. The consulting services were performed by Deloitte. The selection considerations

¹⁵⁴ *Id.*

¹⁵⁵ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 FR 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

and fees for Deloitte were described in detail above. Prior to the creation of CAT LLC, for administrative purposes, Deloitte was engaged by FINRA to provide consulting services related to CAT, but the costs were shared by the consortium of SROs per agreement. Therefore, the consulting costs incurred with respect to Deloitte do not include consulting costs incurred by the individual Participants. The pre-formation consulting costs include the following:

- Established and implemented program operations for the CAT project, including the program management office and workstream design;
- Assisted with the Plan Processor selection process, including but not limited to, the development of the RFP and the bidder evaluation process, and facilitation and consolidation of the Participants' independent reviews;
- Assisted with the development and drafting of the CAT NMS Plan, including conducting cost-benefit studies, reviewing technical requirements of other NMS plans, analyzing OATS and CAT requirements, and drafting appendices to the Plan;
- Provided governance support to the CAT, including governance support prior to the adoption of the CAT NMS Plan, which involved support for the full committee of exchanges and FINRA as well as subcommittees of this group (e.g., Joint Subcommittee Group, Technical, Industry Outreach, Cost and Funding, and Other Products) and the DAG;
- Provided support for updating the SEC on the progress of the development of the CAT;
- Provided support for industry outreach sessions, including with regard to program design and agenda development, program support and logistics and coordination; and
- Provided support in fact finding, drafting content and meeting coordination for WilmerHale with regard to the CAT and the development of the CAT NMS Plan.

Such Pre-Formation Costs did not include costs related to the Chair of the CAT NMS Plan Operating Committee, as the CAT NMS Plan had not yet been adopted.

(ix) Public Relations Costs Incurred Prior to the Effective Date of the CAT NMS Plan

The Pre-Formation Costs include public relations costs of \$57,174. The public relations services were performed by Peppercomm. The selection considerations and fees for Peppercomm are described in detail above. The costs related to Peppercomm

were shared among the SROs. Therefore, the public relations costs do not include public relations costs incurred by the individual Participants. The pre-formation public relations costs include 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.

(B) Cloud Hosting Services

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs related to cloud hosting services as a part of Historical CAT Assessments. CAT LLC believes that the costs related to cloud hosting services described in detail above are reasonable and appropriate given the strict data processing timelines and storage requirements imposed by the Commission-approved CAT NMS Plan and should be recoverable as a part of Historical CAT Assessment 1.

(i) Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

CAT LLC believes that the costs for the cloud hosting services are reasonable, both in terms of the level of the fees paid by CAT LLC for cloud hosting services provided by AWS and the scope of the services performed by AWS for CAT LLC. CAT LLC believes that both the scope and amount of the costs for cloud hosting services are reasonable given the current requirements of the CAT NMS Plan adopted pursuant to Rule 613, including the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan.

CAT LLC believes that the level of fees for the cloud hosting services is 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.

CAT LLC also believes that the scope of services provided by AWS for the CAT are appropriate given the current requirements of the Commission-approved CAT NMS Plan. As described above, the cloud hosting services costs reflect a variety of factors including, among other things:

- *Breadth of Cloud Activities.* AWS was engaged by FCAT, the Plan Processor, to provide a broad range of

services to the CAT, including data ingestion, data management, and analytic tools. Services provided by AWS necessary to the CAT include storage services, databases, compute services, and other services (such as networking, management tools and development operations ("DevOps") tools). AWS also was engaged to provide the various environments for CAT, such as the development, performance testing, test and production environments, which are required by the CAT NMS Plan.

- *High Data Volume.* The cost for AWS services for the CAT is a function of the volume of CAT Data. While it is not linear, the greater the amount of CAT Data, the greater the cost of AWS services to the CAT. The data volume handled by AWS now far exceeds the original volume estimates for the CAT.

- *Plan Requirements.* The cost for AWS services also reflects the technical requirements necessary to meet the stringent performance and other requirements for processing CAT Data. These Plan-dictated processing timelines, storage, testing, security and other technical requirements are significant drivers of AWS costs.

- *Cost Avoidance Efforts.* CAT LLC and FCAT have engaged in ongoing efforts to seek to avoid and minimize AWS costs where permissible under the Plan. Accordingly, these cost avoidance efforts have limited the extent of AWS costs.

In addition, various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs, and that various Plan requirements could be amended or removed without affecting the regulatory purpose of the CAT. Indeed, CAT LLC has repeatedly sought exemptive relief and filed amendments to the CAT NMS Plan, and has even filed suit against the Commission, to seek to revise or eliminate certain costly requirements related to the CAT. However, despite these efforts, absent the Commission granting exemptive relief or approving cost savings amendments to the CAT NMS Plan, CAT LLC, the Participants and Industry Members are all required to comply with such requirements.

(ii) Effect of CAT Design on CAT Costs

(a) Efficient CAT Design

CAT is reasonably designed to efficiently and effectively utilize cloud computing and storage services, given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security,

operational reliance and quality assurance, and maintainability.

The Plan Processor uses state-of-the-art software that meets the strict security standards of the CAT NMS Plan. CAT utilizes a big data processing framework that is extensively used by large data processing companies, such as Apple, Meta, Netflix, IBM and Google. As such, it has substantial commercial support and support in the open-source community. It is also well suited for use with regard to iterative types of algorithms and query functions and analytics that the CAT requires, and it provides the heightened security necessary for the CAT.

The development and implementation of the design of CAT is not and has not been static. CAT LLC and the Plan Processor are always evaluating new innovations and service offerings from AWS and other providers to seek to maximize efficiency and cost avoidance while still satisfying the requirements of the CAT NMS Plan. These efforts have led to substantial savings to date. The cloud hosting costs for 2023 were less than the cloud hosting costs for 2022 by \$8 million despite processing seven trillion more events in 2023 due to the efficiency and cost avoidance efforts for cloud hosting services. For example, when AWS introduced new storage options, FCAT adopted the cost-efficient new storage option after establishing that the new offering would satisfy the security and other standards of the CAT NMS Plan. This change led to millions of dollars of savings in storage costs. Similarly, when AWS introduced a new compute processor, FCAT adopted this new compute processor, which led to millions of dollars in savings in compute costs. However, in other cases, new cloud technology developments could not be implemented in CAT because they would not satisfy the security or other requirements of the CAT NMS Plan.

When evaluating the design of the CAT, it must be kept in mind that the CAT is not a typical commercial technology project. The ability to make use of technology approaches that may lead to cost avoidance is also subject to the restrictive requirements of the CAT NMS Plan, such as processing timeframes, requirements for retention of data versions, query requirements, and security standards. Because such requirements are set forth in the CAT NMS Plan, any modification of such requirements are subject to the time-consuming process of amending the CAT NMS Plan or seeking an exemption from the relevant requirement. For example, CAT LLC recently has filed an

amendment to address several of these expensive Plan requirements.¹⁶²

(b) CAT Was Designed To Minimize Industry Member Effort

The CAT System also was designed to minimize the extent to which Industry Members would need to alter their systems to report to CAT. During the design process, Industry Member groups argued that it would make more sense financially for the CAT to accommodate differences in industry systems, than for all Industry Members to change their systems. Moreover, such design choices would facilitate consistency, uniformity and accuracy in reporting. Requiring the CAT to make such accommodations may increase CAT costs while accommodating CAT Reporters.

Based on the requirements in the CAT NMS Plan and/or in response to industry requests for functionality to be embedded with the Plan Processor to streamline or limit Industry Member system changes, the CAT has been designed to limit the effect on Industry Members. The following provides examples of such accommodations:

- *Industry Member Reporting.* In light of the complexity of Industry Member market activity, the CAT's order reporting and linkage scenarios document for Industry Members is over 800 pages in length, addressing nearly 200 scenarios.¹⁶³ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity for the Plan Processor, but streamline reporting for Industry Members. Furthermore, the Plan Processor greatly expanded Industry Member linkage requirements to support, among other things, child events and supplemental events, allowing for "stateless as-you-go" and "batch end-of-day" reporting when all data is available. Accordingly, CAT takes on the significant cost and effort of providing the required linkages between CAT events; correspondingly, Industry Members are not required to perform this costly task.

- *File Submission Process.* The CAT was designed to accommodate the varying needs of CAT Reporters with regard to the file submission process. For example, in a 2018 letter, FIF stated that "[t]he SFTP-based submission process is cumbersome, exposes

industry members to unnecessary complexity, and puts the burden of support on the CAT Reporter rather than imbedding more functionality into the Plan Processor."¹⁶⁴ Currently, FCAT provides two mechanisms for submitting files: SFTP via a private network, and the Web via Reporter Web Portal.

- *Error Corrections.* The industry also emphasized the need for the CAT to provide error correction tools and functionalities to identify, rectify and re-submit corrections within the required timeframe. For example, FIF stated in a 2018 letter the following:

To be clear, if OATS-like error correction tools are not made available on Day 1, hundreds of firms will be required to create and test their own tools or obtain vendor alternatives prior to the CAT Go-Live Date. Proprietary tools will require additional system builds, access to and ingestion of CAT data to perform system validation, and testing which will further stress the limited number of subject matter experts ("SMEs") dedicated to the implementation of CAT reporting. Should this occur, inevitably firms (especially small firms who lack the necessary IT staff to write code and develop proprietary systems), may be put in the position of passing onto investors the cost required to build hundreds of redundant systems.¹⁶⁵

CAT provides various tools to help Industry Members identify and rectify errors.

- *Data Ingestion Format.* The industry also recommended that CAT adopt a flexible input format that provides an option for Industry Members to submit data in formats that are already in use to reduce costs and potential reporting errors. For example, FIF argued the following:

FIF CAT WG is not proposing a specific format; rather, we are proposing flexibility of input formats which includes support of existing formats (e.g., OATS, FIX) as well as a baseline specification where all fields are defined, and normalized. The input formats must be clearly and thoroughly defined in Technical Specifications, including FAQs.

Mandating a uniform format for reporting data to the CAT simplifies the task for the Central Repository of consolidating/storing data, but it puts the burden on each CAT Reporter to accurately translate their current (e.g., OATS) reporting information into a

¹⁶² See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 FR 26983 (Apr. 16, 2024); Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (Mar. 27, 2024) (proposing amendments to the CAT NMS Plan for \$23 million in annual savings).

¹⁶³ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

¹⁶⁴ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

¹⁶⁵ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

uniform CAT interface. However, that is likely to yield more errors because it is very dependent on accurate, complete and timely information (Technical Specifications, FAQs, meta-data, competent CAT help desk) available to CAT Reporters, availability of sophisticated CAT test tools to validate interface protocols, and the skill levels of the estimated 300+ unique CAT Reporters/Submitters during Phase 1 of CAT. Concentrating the responsibility of data conversions with the Central Repository is a reasonable trade-off that should yield fewer errors, and greater accuracy.¹⁶⁶

CAT provides such a flexible input format.

(c) Effect of Initial Plan Processor Design

The costs for cloud hosting services are appropriate and have not been adversely affected by the original design and approaches of the Initial Plan Processor. FCAT's design costs are the result of the requirements of the Commission-approved CAT NMS Plan.

When FCAT took over as the Plan Processor from Thesys, it utilized certain aspects of the technical specifications created by Thesys in its design. However, FCAT has not maintained aspects of the original design that would not be appropriate for the CAT. FCAT revised and enhanced the original technical specifications of the CAT System to increase its efficiency and efficacy, and to ensure its compliance with the CAT NMS Plan. For example, the Initial Plan Processor's approach utilized many more fields than FCAT's approach, which relies on additional linkages. With the additional linkages, the CAT System takes on more of the CAT-related burdens than the Industry Members. Such an approach serves to facilitate consistency, uniformity and accuracy in reporting.

Moreover, FCAT did not utilize the system built by the Initial Plan Processor; it rebuilt the CAT System based on revised technical specifications. For example, the Initial Plan Processor used an on-premises processing approach which was not geared toward the huge amounts of data stored in the CAT, while FCAT adopted a cloud-based solution in response to such data demands.

Furthermore, given the very short timeframe to develop the CAT System and the prior optimization of certain query tools (e.g., Diver) for regulatory use with significant amounts of data,

FCAT determined to rely upon certain existing FINRA tools and adapt them for use with the CAT.

(iii) Consideration of AWS Alternatives

CAT LLC continues to support the selection of AWS as the cloud hosting services provider for CAT given the compliance, operational, and security requirements of the CAT. Independent analyses confirm these conclusions, noting that "AWS is an excellent choice for either strategic or tactical use and recommends considering AWS for almost all cloud IaaS or IaaS+PaaS scenarios."¹⁶⁷ AWS provides the following benefits to CAT, among others:

- *Broad Suitability.* AWS has a long track record of successfully serving cloud customers with mission-critical projects.

- *Proven Scalability.* AWS has demonstrated that it is capable of building and delivering services on a large scale.

- *Track Record of Innovation.* AWS continues to rapidly innovate, both in terms of new domains of capability and at a fundamental level, thereby facilitating innovation for its customers.

- *Resiliency/Dependability.* Another benefit of AWS is its resiliency; it has a strong track record of stable services. As noted in a review of cloud service providers, "[c]ustomers like to have a broad set of options for resilience and for their cloud providers to have a strong track record of stable services (continuously available, without operational quirks). Only AWS fulfills both desires."¹⁶⁸

- *Technical and Customer Support.* AWS consistently provides high-quality technical and customer support and engagement. Given the size, scope and regulatory importance of CAT, customer support and engagement that CAT has with the highest levels of AWS are very important to the success of the CAT.

- *Scale.* AWS is capable of supporting large-scale solutions, which is critical given the size and magnitude of the CAT.

- *Security.* AWS provides the security features necessary for the CAT.

In addition, the nature of the CAT, including the amount of data it must process and the size of its data footprint, does not allow for a multi-cloud solution as this would be cost prohibitive and greatly increase the security boundary and associated risk profile of the CAT. For example, a

multi-cloud hosting option would increase costs, complexity, and risk for operations with regard to, for example, DevOps, production support, and networking. Similarly, with regard to security, a multi-cloud solution would increase risk, including with regard to the need for data transfers between cloud providers and the expansion of the security boundary. With regard to labor, a multi-cloud solution would lose economies of scale due to the need to support unique cloud requirements. Accordingly, the use of single-cloud solution continues to provide advantages with regard to cost, complexity, and risk. Indeed, "[t]he best practice is to focus on a single primary strategic provider."¹⁶⁹

Furthermore, if another cloud service provider were determined to be a better match for the CAT at some future date, switching cloud service providers would be a very significant, expensive and time-consuming effort. Such an effort would likely be a 10-to-15-year commitment at a substantial expense. Such a move would require the replication or redesign of the underlying cloud environments (e.g., organizational setup, identify management, accounts, environments, DevOps tooling like release management/config management/network management), as the new provider likely would not have the same infrastructure and software. Once that process has been completed, an exabyte of CAT data would need to be securely migrated to the new platform.

(C) Funding Model Filings

CAT LLC believes that the recovery of costs related to the development of the funding model is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

Funding the CAT is a critical aspect of Rule 613 and the CAT NMS Plan. Article XI of the CAT NMS Plan describes in detail the requirements for funding the CAT, and the Participants are required to comply with and enforce compliance with the funding requirements of the CAT NMS Plan, just as with other aspects of the Plan. Accordingly, the development and implementation of a funding model for the CAT is as much a part of the requirements of the CAT NMS Plan as the development and operation of the CAT System. CAT LLC sees no reason to distinguish the efforts to develop a funding model from, for example, efforts to develop the CAT System, in seeking to recover reasonable CAT costs.

¹⁶⁶ Letter from Mary Lou Von Kaenel, Managing Director, FIF, to Brent Fields, Secretary, Commission at 92 (July 18, 2016), <https://www.sec.gov/comments/4-698/4698-13.pdf>.

¹⁶⁷ See, e.g., Lydia Leong and Adrian Wong, Solution Comparison for Strategic Cloud Integrated IaaS and PaaS Providers (July 28, 2023) ("Strategic Cloud Assessment Article").

¹⁶⁸ Strategic Cloud Assessment Article.

¹⁶⁹ *Id.*

Moreover, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . legal costs.”¹⁷⁰ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . legal . . . costs.”¹⁷¹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted legal costs above. These legal costs include costs related to the development of the CAT Funding Model.

In addition, the legal costs incurred for the assistance in developing the CAT Funding Model are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at negotiated rates for such services that reflect both the extent of the services and market rates. Moreover, the scope of the legal costs associated with the development of the funding model reflect the complexity of the task in satisfying the detailed requirements of the CAT NMS Plan, the standards of the Exchange Act, and the many perspectives of the different market constituents potentially affected by or interested in the funding model, including Industry Members, Participants and investors. The many and varied comments by market participants on CAT funding over the years demonstrate the complexity of the task.

(D) Costs Related to Litigation With the SEC

CAT LLC believes that the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan is appropriate, and that the amount and scope of such costs, as described above, are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁷² Moreover, CAT LLC initiated such litigation, and incurred the related legal costs, because it was critical to address the Commission’s interpretations of the

CAT NMS Plan. Among other things, such interpretations threatened to impose unnecessary costs on the CAT, which would be borne by the Participants and Industry Members. Indeed, in response to the litigation, the Commission provided exemptive relief that allowed alternative, more cost-effective approaches to the implementation of the CAT. Specifically, in the 2023 exemptive order, the Commission stated:

The conditional exemptive relief in this Order allows for the implementation of alternative regulatory solutions that continue to advance the regulatory goals that Rule 613 and the CAT NMS Plan were intended to promote, while reducing the implementation and operational costs, burdens, and/or difficulties that would otherwise be incurred by the Participants and Industry Members that must fund the CAT.¹⁷³

CAT LLC believes it is reasonable and appropriate to incur costs to limit the need to incur even greater costs due to certain interpretations of the Plan.

In addition, the legal costs incurred during the litigation are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. As described above, the specialized services were performed by experienced counsel at market rates for such services. As such, the legal costs related to this litigation incurred during the period covered by Historical CAT Assessment 1 were reasonable.

Finally, Industry Members will directly benefit from the result of the litigation because it has addressed CAT NMS Plan requirements that would have imposed significantly greater costs on the CAT. Accordingly, it is reasonable and appropriate that the costs of such litigation be included in the Historical CAT Costs 1.

(E) Costs Related to the Initial Plan Processor

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017, which was the date by which Participants were required to begin reporting to the CAT, due to the delay in the commencement of reporting to the CAT. As discussed above, the Participants determined to exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, which includes \$37,852,083 in Thesys costs incurred from November 15, 2017 through November 15, 2018 (as well as other CAT costs during this period). The remaining Thesys costs incurred after November 15, 2018 are the \$19,628,791

in capitalized developed technology costs for the period from November 16, 2018 through February 2019 incurred in the development of the CAT by the Initial Plan Processor, as well as a transition fee for the transition from the Initial Plan Processor to the successor Plan Processor. The Participants would remain responsible for 100% of these \$19,628,791 in costs.

CAT LLC believes that it is appropriate to recover costs related to the services performed by the Initial Plan Processor prior to November 15, 2017. CAT LLC notes that the development and implementation of the CAT System, while unprecedented in scope and design, is like any other large and innovative technology project in that, inevitably, there were adjustments and refinements in the technical approach as the project developed, even with substantial planning efforts and oversight prior to the build. This is even more likely when the project faces a very tight implementation schedule, such as the one imposed by the Commission in Rule 613 and the CAT NMS Plan. However, an adjusted approach does not mean that the funds were not valid expenditures and should not be recovered.

The reasonableness of Thesys costs should be evaluated by the Commission as of the time they were incurred, not in hindsight. As detailed above, the Commission concluded in 2016 that “the competitive bidding process to select the Plan Processor is a reasonable and effective way to choose a Plan Processor,” and that “the process set forth in the Selection Plan should be permitted to continue.”¹⁷⁴ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.¹⁷⁵ At the time, neither the Commission nor the industry argued that the selection of the Initial Plan Processor was unreasonable or otherwise inconsistent with the CAT NMS Plan, nor did they predict the selection would result in unanticipated delays in the implementation of the CAT System. On the contrary, on April 4, 2017, the President of SIFMA wrote that “SIFMA looks forward to commencing work with the SROs and Thesys.”¹⁷⁶

¹⁷⁴ CAT NMS Plan Approval Order at 84737.

¹⁷⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (Jan. 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

¹⁷⁶ Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor (Apr. 4, 2017), <https://www.sifma.org/wp-content/uploads/2017/05/SIFMA-Submits-Comment-Letter-to-SRO-on-the-selection-of-Thesys-as-the-CAT-Processor.pdf>.

¹⁷⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷² See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁷³ Settlement Exemptive Order at 77129–30.

As noted in the CAT Funding Model Approval Order, “[i]n Rule 613, the Commission made the determination that the costs of the CAT should be shared by the Participants and Industry Members.”¹⁷⁷ If the CAT Funding Model had existed on Day 1, the risk of any unanticipated costs or challenges associated with the Initial Plan Processor would have been fairly and reasonably shared among the Participants and Industry Members on an ongoing basis. Given that the Commission concluded in 2012 that the costs of the CAT would be shared by the Participants and Industry Members, it is not fair or reasonable to determine in hindsight that all of the risk involved in developing the CAT should be allocated entirely to the Participants.

(F) CAIS Implementation Costs

CAT LLC believes that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described above, are reasonable, and that the reasonableness of historical costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable CAIS operating costs as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . CAIS operating fees.”¹⁷⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . CAIS operating fees.”¹⁷⁹ In keeping with these provisions, this filing provides a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The “CAIS Operating Costs” for Historical CAT Assessment 1 total \$9,480,587, with Pre-FAM costs of \$2,072,908, FAM 1 costs of \$254,998, FAM 2 costs of \$1,590,298, and FAM 3 costs of \$5,562,383. As described above, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of LTIDs; and (2) the development of the CAIS Technical Specifications and the building of CAIS.

These two categories of costs are discussed in more detail below.

(i) LTID Reporting

During the period covered by Historical CAT Assessment 1, the CAIS operating costs included costs related to the acceleration of the reporting of LTIDs earlier than originally contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.¹⁸⁰ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTIDs to the CAT in Phases 2c and 2d, instead of with the rest of Customer Account Information in Phase 2e, which potentially could result in an earlier elimination of broker-dealer recordkeeping, reporting and monitoring requirements of the Large Trader Rule.”¹⁸¹ To implement the reporting of LTIDs to the CAT, the following steps were taken during the period covered by Historical CAT Assessment 1:

- After FCAT developed the LTID Technical Specifications, the LTID Technical Specifications were published on January 31, 2020, with additional updates provided to the LTID Technical Specifications through April 2021.¹⁸²
- The LTID account information testing environment opened on August 24, 2020.
- The LTID account information reporting production environment opened on December 14, 2020.
- CAT Reporters were required to request their production readiness certification for account information related to LTIDs by the deadline of April 9, 2021.
- The LTID account information reporting for Phases 2a, 2b and 2c for Large Industry Members went live on April 26, 2021.
- The LTID account information reporting for Phases 2d for Large Industry Members went live on December 13, 2021.
- The LTID account information reporting for Phases 2a, 2b, 2c and 2d for Small Industry Members went live on April 26, 2021.

Throughout this project, FCAT and CAT LLC worked closely with the industry on LTID and CAIS reporting. Between December 2019 and December

2021, at least 57 checkpoint calls, webinars, and technical working group meetings with industry representatives were hosted to address issues and to educate CAT Reporters regarding LTID and CAIS reporting.¹⁸³

The LTID reporting project was successfully completed in a timely fashion, and the fees related to the project were reasonable. Accordingly, CAT LLC appropriately seeks to recover such costs via Historical CAT Assessment 1.

(ii) CAIS Reporting

During the period covered by Historical CAT Assessment 1, FCAT began the development of the full CAIS Technical Specifications and the building of CAIS. The CAIS Technical Specifications were developed during this period as follows:

- Iterative drafts of the CAIS Technical Specifications were published on June 30, 2020, December 1, 2020, and January 1, 2021.¹⁸⁴
- The full, final CAIS Technical Specifications were published on January 29, 2021.

- Updated versions of the CAIS Technical Specifications were published throughout 2021.¹⁸⁵

As discussed above, FCAT and CAT LLC frequently engaged with the industry regarding the development of CAIS, hosting regular checkpoint calls, webinars, and technical working group meetings with industry representatives to address any issues, including addressing the interplay between Industry Members’ existing customer systems and CAIS, and to educate CAT Reporters regarding LTID and CAIS reporting. Such engagement was critical to the CAIS development process as the CAIS project was unprecedented in terms of its content, scope and complexity.

During this period, FCAT also commenced the building of the CAIS system in accordance with the CAIS Technical Specifications during the period covered by Historical CAT Assessment 1. The CAIS system was ready for industry testing shortly after the end of this period in January 2022.

The CAIS Technical Specifications and the CAIS system, as developed during this period, continue to be in use

¹⁸³ Such contact points with the industry are described in detail on the Events web page of the CAT website (<https://www.catnmsplan.com/events>).

¹⁸⁴ The CAIS Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

¹⁸⁵ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

¹⁷⁷ CAT Funding Model Approval Order at 62650.

¹⁷⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁷⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁸⁰ See Phased Reporting Exemptive Relief Order at 23079–80.

¹⁸¹ *Id.* at 23078–79, n.70.

¹⁸² The LTID Technical Specifications, including original drafts and updated versions, are available on the Industry Member Specifications page of the CAT website (<https://www.catnmsplan.com/specifications/im>).

today. Industry Members have been required to report, and have continuously reported, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations. The CAIS system accepts and validates the CAIS data submitted by Industry Members and provides Industry Members with initial feedback on data errors. In light of the unprecedented nature of the CAIS system, certain changes to the system, such as changes related to error corrections and the CAIS regulatory portal, were necessary to finalize CAIS reporting. FCAT worked to address these remaining issues,¹⁸⁶ and, as of May 31, 2024, FCAT indicated that it had achieved the final CAIS reporting milestone. Accordingly, CAT LLC appropriately seeks to recover CAIS operating costs via Historical CAT Assessment 1.

(G) Public Relations Costs

CAT LLC believes that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described above, are reasonable.

The Commission has long recognized that external public relations costs are reasonably associated with creating, implementing and maintaining the CAT. In the CAT NMS Plan Approval Order, the Commission estimated that the Participants had collectively spent approximately \$2,400,000 in preparation of the CAT NMS Plan on external public relations, legal, and consulting costs, and estimated that the Participants would continue to incur external public relations costs associated with maintaining the CAT upon approval of the CAT NMS Plan.¹⁸⁷

In approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for public relations services as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . public relations costs.”¹⁸⁸ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . public relations costs.”¹⁸⁹ In keeping with these provisions, a brief description of

reasonable public relations costs are described above.

In addition, CAT LLC determined that the public relations costs described above are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1. The services performed by the public relations firms through 2021 were limited in scope to assist CAT LLC, which has no employees of its own, to be better positioned to understand and address CAT matters to the benefit of all market participants and to communicate on important CAT topics with the public. In addition, the costs for these services were appropriately limited. During the 10-year period covered by Historical CAT Assessment 1, the average cost per year for these services was approximately \$36,000.

(H) Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

CAT LLC believes that the recovery of legal costs related to the limitation of liability provision, including costs related to the proceedings before the SEC and costs related to the proposed amendment to the Consolidated Audit Trail Reporter Agreement and the Consolidated Audit Trail Reporting Agent Agreement (the “Reporting Agreements”) is appropriate and that the amount and scope of such costs as described above are reasonable.

As a preliminary matter, as discussed above, the Commission recognized that it is appropriate to recover reasonable costs for legal services as a part of Historical CAT Assessments.¹⁹⁰ In addition, CAT LLC determined that the legal costs incurred for the assistance with regard to the limitation of liability provisions are reasonable in both amount and scope and should be recoverable as a part of Historical CAT Assessment 1.

Moreover, it is critical that CAT LLC, which has no employees of its own, have the ability to fund a legal defense in litigation and other legal proceedings against it. In response to CAT LLC requiring Industry Members to agree to the limitation of liability provision to submit data to the CAT, SIFMA filed an application for review of actions taken by CAT LLC and the Participants pursuant to Sections 19(d) and 19(f) of the Exchange Act. Contemporaneously with the filing of this proceeding, SIFMA moved for a stay of the requirement that Industry Members sign a Reporter Agreement, or in the alternative, asked the Commission to

further delay the launch of CAT reporting on June 22, 2020. CAT LLC must have the resources to defend itself from litigious actions by others, like these.

Although a limitation of liability provision ultimately was not adopted as proposed, it was a reasonable provision to propose for the CAT Reporter Agreements, given that such provisions are in accordance with industry norms. Limitations of liability are ubiquitous within the securities industry and have long governed the economic relationships between self-regulatory organizations and the entities that they regulate. For example, U.S. securities exchanges have adopted rules to limit their liability for losses that Industry Members incur through their use of exchange facilities.¹⁹¹ Similarly, FINRA’s former order audit trail, OATS, which has functioned as an integrated audit trail of order, quote, and trade data for equity securities, required FINRA members to acknowledge an agreement that includes a limitation of liability provision.¹⁹² In addition, such a provision was intended to ensure the financial stability of the CAT. Accordingly, it was reasonable for CAT LLC to propose the use of such a provision.¹⁹³

Furthermore, as described above, the specialized services were performed by experienced counsel at market rates for such services. Accordingly, the legal costs for the efforts related to the limitation of liability provision were reasonable.

(I) Costs for the Chair of CAT Operating Committee

CAT LLC believes that the recovery of consulting costs related to the Chair of the CAT Operating Committee is appropriate and that the amount and scope of such costs are reasonable.

As a preliminary matter, the selection of the Chair of the Operating Committee complies with the requirements of Section 4.2 of the CAT NMS Plan. The initial Chair that served during the period covered by Historical CAT Assessment was designated by a Participant as the Participant’s alternate

¹⁹¹ See, e.g., NASDAQ Equities Rule 4626.

¹⁹² FINRA Rule 1013(a)(1)(R) requires all applicants for FINRA Membership to acknowledge the FINRA Entitlement Program Agreement and Terms of Use, which applies to OATS. Industry Members click to indicate that they agree to its terms—including its limitation of liability provision—every time they access FINRA’s OATS system to report trade information (i.e., repeatedly over the course of a trading day for many Industry Members).

¹⁹³ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹⁸⁶ See, e.g., CAT Q4 2023 Quarterly Progress Report (Jan. 30, 2024) (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

¹⁸⁷ CAT NMS Plan Approval Order at 84917–18.

¹⁸⁸ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁸⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁹⁰ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

voting member. Accordingly, the Chair is a representative of the Participants, as required by the CAT NMS Plan.

In addition, in approving the CAT Funding Model, the Commission recognized that it is appropriate to recover reasonable costs for consulting as a part of Historical CAT Assessments. As approved by the SEC, the CAT NMS Plan states that “the reasonably budgeted CAT costs shall include . . . consulting . . .” costs.¹⁹⁴ In addition, the CAT NMS Plan also requires Participants to include in their fee filings “a brief description of the amount and type of the Historical CAT Costs, including . . . consulting”¹⁹⁵ costs. In keeping with these provisions, a brief description of reasonable consulting costs is included in this filing, and such reasonable consulting costs include the costs related to the Chair position.

The Participants determined that the position of the Chair was a critical role for the implementation of the CAT, and an independent Chair would appropriately consider and address the views of each of the Participants. The Participants also determined that it was important to have a Chair with a strong background regarding issues related to the regulatory obligations of self-regulatory organizations, including their obligations under national market system plans. The compensation paid to the Chair is appropriate for a person with such background and skills. The average annual amount paid to the Chair from 2017 through the end of FAM 3 was \$292,733.30. Separate from the Chair, CAT LLC relies upon a Leadership Team of representatives of the SROs to oversee the day-to-day implementation of the CAT NMS Plan. CAT LLC does not compensate any member of the Leadership Team.

(11) Fee Implementation Assistance for Industry Members

(A) Reconciliation of CAT Invoices

(i) Reconciliation of CAT Invoices to Underlying Trades Provided by CAT

CAT LLC understands that there are three types of reconciliation processes related to the invoices:

- *Reconciliation of CAT Invoices to Underlying Trades:* Reconciling the CAT invoice amount to the underlying trades provided by CAT;

- *Matching Trades to Books and Records:* Providing the means to match the underlying trades provided by CAT with CAT invoices to other books and

records independently maintained by individual CAT Reporters (e.g., exchange trade journals/ acknowledgements) and data sources of self-regulatory organizations independent of CAT; and

- *Order Originator Identification:* Providing the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices, which would facilitate firms’ ability to pass through CAT Fees to their customers.

As discussed further below, CAT LLC only considers the first type of process to be a “reconciliation” and the only type of process that is required under the CAT NMS Plan. CAT LLC provides the means to reconcile the CAT invoice amount to the underlying trades provided by CAT.

The CAT NMS Plan does not require CAT LLC to facilitate the second type of process: matching underlying trades for a CAT invoice with a firm’s internal books and records. CAT LLC has access only to the underlying trades provided by CAT; it does not have access to a firm’s internal books and records. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

The CAT NMS Plan also does not require CAT LLC to provide the ability to identify the order originator for the underlying trades for the CAT invoices. Accordingly, the billing guidance and processes do not provide CAT Reporters with the ability to identify the order originator for the underlying trades provided by CAT with CAT invoices. CAT LLC has been working closely with CAT Reporters to explain its billing approach and to address any outstanding billing questions. But, it should not be lost that CAT LLC provides information sufficient to allow CAT Reporters to reconcile CAT invoice amounts with the underlying trades provided by CAT LLC.

(ii) Match the Underlying Trades Provided by CAT With CAT Invoices to Firms’ Internal Books and Records Independent of CAT

The CAT NMS Plan does not require CAT LLC to facilitate the matching of underlying trades for a CAT invoice with a firm’s internal books and records, which may consist of trading data from various sources external to CAT. Although beyond the requirements of the CAT NMS Plan and involving firm specific considerations, CAT LLC

voluntarily has provided guidance and processes to assist CAT Reporters in their efforts to match the underlying trades with their own books and records.

In this regard, it is important to recognize that CAT LLC has developed a billing approach that greatly improves upon existing billing practices for similar regulatory fees (e.g., fees related to Section 31). Accordingly, with the additional information voluntarily provided by CAT LLC, CAT Reporters generally will have sufficient information to match their underlying trades provided by CAT with their own internal books and records that are independent of CAT or to SRO data that is independent of CAT data. However, CAT LLC emphasizes that providing such additional information is not required by the CAT NMS Plan.

To facilitate the introduction of CAT fees, CAT LLC has worked with FCAT to develop an approach to CAT billing that is consistent with existing billing constructs used with regard to Section 31-related sales values fees, subject to certain enhancements. Under this billing approach, FCAT is providing additional linkage elements, not necessarily provided in the Section 31-sales value fee context, to facilitate CAT Reporters’ ability to match the underlying trades provided by CAT with their internal books and records and to reduce the complexity of that process. Specifically, FCAT is providing various key elements of the trade itself, such as the tradeID and branch sequence,¹⁹⁶ to CAT Reporters in the trade billing details provided with their CAT invoices (“Additional Trade Details”). As a result, CAT Reporters now have numerous alternative methods for matching a trade with their internal books and records where they previously did not have such matching methods in other fee contexts.

With the Additional Trade Details, CAT LLC and FCAT believe that the overwhelming majority of underlying trades provided by CAT bills can be matched with a CAT Reporter’s internal books and records. CAT LLC recognizes that there may be certain cases in which such matching is more difficult given various firm-specific considerations, but believes that such instances are significantly more limited than with regard to the SRO fees charged in

¹⁹⁶ See CAT Technical Specifications for Billing Trade Details; Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>); CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

¹⁹⁴ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁹⁵ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

relation to Section 31.¹⁹⁷ By providing Additional Trade Details that are not available in other fee contexts, FCAT enhances the Industry Members' ability to match the underlying trades provided with CAT invoices with books and records and SRO data, both of which are independent of CAT data.

(iii) CAT LLC Is Not Required To Facilitate CAT Reporters' Ability To Pass Through Fees to Their Customers

Similar to other regulatory fees, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Accordingly, Historical CAT Assessment 1 does not address the process by which any CAT Reporters may pass through the fee to their customers. Likewise, the CAT billing approach provided by the Plan Processor is designed to address the needs of CAT Reporters with regard to the reconciliation of CAT invoices with the underlying trades provided by CAT LLC with the invoices; they are not designed to address issues related to any pass-through fees. Accordingly, facilitating CAT Reporters' ability to pass through fees to their clients is outside the scope of this fee filing. Nevertheless, as described below, CAT LLC and the Plan Processor have expended significant efforts to provide technical assistance to Industry Members regarding the implementation of Historical CAT Assessment 1, including providing Additional Trade Details that provide significant details about each underlying trade.

(a) Originating Brokers Versus Executing Brokers

In its approval of the CAT Funding Model, the Commission approved charging CAT fees to the CAT Executing Broker, rather than the originating broker. This fee filing must comply with the requirements of the CAT Funding Model, and, therefore, charges the Historical CAT Assessment 1 to CAT Executing Brokers.

Moreover, charging originating brokers would introduce significant complexity to the billing process from the CAT's perspective, and would increase the costs of implementing CAT fees. Charging the CAT Executing Broker is simple and straightforward, and leverages a one-to-one relationship between billable events (trades) and billable parties, similar to other transaction-based fees. In contrast, for a single trade event, there may be many originating brokers, and each trade must be broken down on a pro-rata basis, to account for one or more layers of aggregation, disaggregation, and representation of the underlying orders. While CAT is indeed designed to capture and unwind complex aggregation scenarios, the data and linkages are structured to facilitate regulatory use, and not a billing mechanism that assesses fees on a distinct set of executed trades; it is not simply a matter of using existing CAT linkages. Furthermore, charging originating brokers would implicate issues related to lifecycle linkage rates, and issues related to corrections, cancellations and allocations, while charging CAT Executing Brokers would avoid such issues.

(b) Identification of Order Originator for Underlying Trades

As noted, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass any CAT Fees on to their customers, nor does it impose any obligation on CAT LLC or the Plan Processor to facilitate firms' ability to do so. Nevertheless, the Additional Trade Details provided with regard to the underlying trades on CAT invoices may assist with this process. Like with Section 31-related sales value fees, however, it is not always possible to trace every fee on a transaction back to the originating party. Industry Members have faced these issues under Section 31-related sales values fees for many years.¹⁹⁸ However, with the Additional Trade Details provided under the CAT billing approach, in many cases, CAT Reporters will be able to identify the order originator for the

underlying trades provided by CAT with CAT invoices. In some cases, CAT LLC believes that certain issues related to certain types of market activity may implicate CAT Reporters' ability to identify the order originator for a limited set of underlying trades for the CAT invoices. Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have been carefully researching and analyzing these types of issues as they are identified, and have been working voluntarily to assist CAT Reporters with these issues as necessary and when possible. In addition, CAT LLC intends to continue to provide CAT Reporters with billing guidance through FAQs, CAT Alerts and Helpdesk responses to address outstanding billing questions.

(B) Significant Technical Assistance

CAT LLC has worked with FCAT to provide significant technical assistance to Industry Members to allow the Industry Members to understand how Historical CAT Assessment 1 will be implemented and billed, including webinars, CAT alerts, mock invoices, and responses to questions posed to the FCAT Help Desk.

- *Technical Specifications and Scenarios.* CAT LLC has provided detailed technical documentation for CAT billing, including (1) technical specifications, which describe the CAT Billing Trade Details Files associated with monthly CAT invoices, including detailed information about data elements and file formats as well as access instructions, network and transport options;¹⁹⁹ (2) trade details schemas;²⁰⁰ and (3) CAT billing scenarios.²⁰¹

- *Industry Webinars.* CAT LLC has hosted two industry webinars specifically dedicated to CAT billing. The first webinar, hosted on September 28, 2023, discussed the operational implementation of the CAT Reporter billing process.²⁰² The second webinar, hosted on November 7, 2023, provided (1) a demonstration of the CAT Reporter Portal and how to access CAT billing documents, including CAT invoices;

¹⁹⁷ For years, broker-dealers have faced similar reconciliation issues with regard to SRO fees related to Section 31. Broker-dealers have responded to this issue in the Section 31 context by exercising their discretion as to whether and the manner and extent to which they pass on those fees (e.g., by rounding up its fees to the nearest cent, or decide to charge for, or not charge for, certain transactions, or assess a specific fee or incorporate the costs into other fee programs). See, e.g., Securities Exchange Act Rel. No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004) (noting that broker-dealers may "over-collect" Section 31-related fees charged to their clients due to rounding practices, and double-counting with regard to certain transactions).

¹⁹⁸ "FINRA charges a Regulatory Transaction Fee ("RTF") to industry members to reimburse FINRA for the Section 31 fees that FINRA pays to the Commission. FINRA does not currently provide industry members with the data that industry members require for proper reconciliation of RTF fees. This has been a major problem for the industry for many years." Letter from Howard Meyerson, Managing Director, FIF, to Robert Cook, Chief Executive Officer, FINRA at 2 (Dec. 15, 2023) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2820:fif-letter-to-finra-on-pass-through-of-finra-cat-fees&view=category>).

¹⁹⁹ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8, 2023) (https://catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

²⁰⁰ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

²⁰¹ CAT Billing Scenarios, Version 1.0 (Nov. 30, 2023) (<https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>).

²⁰² CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

and (2) additional information on underlying trade details in relation to the CAT Reporter billing process and an overview of the CAT Contact Management System.²⁰³ 485

participants and 394 participants attended the two webinars, respectively.

- *CAT Alert.* CAT LLC has published a detailed CAT Alert that describes how FCAT, as the Plan Processor acting on behalf of CAT LLC, will calculate applicable fees, issue invoices to and collect payment from CAT Executing Brokers.²⁰⁴

- *Frequently Asked Questions (FAQs).* CAT LLC also has continued to engage with the industry on billing issues by making responses to billing FAQs available on the CAT website. The FAQs address a broad range of frequently asked questions, including, for example, which Industry Members will receive invoices, how fees are calculated, when and how fees are required to be paid, how to access invoices, and how to update the billing contact. To date, responses to 27 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.²⁰⁵

- *Mock Invoices.* To assist Industry Members with compliance with the commencement of Historical CAT Assessment 1, CAT LLC has been making available to CAT Executing Brokers mock invoices for Historical CAT Assessment 1 since December 2023 for billable activity occurring in November 2023. The mock invoices are in the same form as the actual, payable invoices, including both the relevant transaction data and the corresponding fee (as originally contemplated). However, no payments are required in response to such mock invoices; they are to be used solely to assist CAT Executing Brokers with the development of their processes for paying the CAT fees. Such data provides CAT Executing Brokers with a preview of the transaction data used in creating the invoices for Historical CAT Assessment 1 fees, as the data will be the same as data provided in actual invoices. Such data preview is intended to facilitate the payment of Historical CAT Assessment 1. For the November, December, and January billing periods, FCAT has generated trade detail files for

569 distinct firms that are CAT Executing Brokers. As such, CAT Reporters have actively engaged in the billing process via the mock invoices.

- *Help Desk Assistance.* CAT LLC also provides detailed, individualized assistance to Industry Members regarding CAT fees and the billing process through the FCAT Help Desk.²⁰⁶ For example, the Help Desk has assisted with 406 cases related to the billing of CAT fees from July 2023 through March 2024.

By providing such detailed and sustained assistance to Industry Members regarding CAT fees and billing, CAT LLC has successfully addressed questions raised by Industry Members regarding the CAT fees and billing processes.

(C) Ample Preparation Time

CAT LLC has provided Industry Members with ample time to comply with the implementation of Historical CAT Assessment 1. CAT LLC originally proposed issuing the first invoices for Historical CAT Assessment 1 in December 2023 based on transactions in Eligible Securities in November 2023. In consideration of the feedback about the need for additional time to implement the new fee, CAT LLC pushed back this timeline by four months, proposing to issue the first Historical CAT Assessment 1 in April 2024 based on transactions in March 2024.²⁰⁷ This filing pushes this timeline back even further for implementing Historical CAT Assessment 1, proposing to issue the first invoices for Historical CAT Assessment 1 in November 2024 based on transactions in Eligible Securities in October 2024. Moreover, as discussed above, during these additional months, FCAT has been working closely with Industry Members to provide guidance regarding their mock bills and reconciliation efforts related thereto.

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,²⁰⁸ 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,²⁰⁹ 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 15A(b)(9) of the Act,²¹⁰ 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.²¹¹ 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."²¹² 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

²⁰³ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

²⁰⁴ See CAT Alert 2023-02 (Oct. 12, 2023) (<https://www.catnmsplan.com/sites/default/files/2023-10/10.12.23-CAT-Alert-2023-02.pdf>).

²⁰⁵ See CAT Billing FAQs, Section V of CAT FAQs (https://www.catnmsplan.com/faq?search_api_fulltext=&field_topics=271&sort_by=field_faq_number).

²⁰⁶ The CAT NMS Plan requires that the Plan Processor "staff a CAT help desk, as described in appendix D, CAT Help Desk, to provide technical expertise." Section 6.10(c)(vi) of the CAT NMS Plan. See also Section 10.3 of appendix D of the CAT NMS Plan for a description of the Plan requirements for the CAT Help Desk.

²⁰⁷ Securities Exchange Act Rel. No. 34-99358 (January 17, 2024), 89 FR 10773 (February 13, 2024) ("SR-BX-2024-002").

²⁰⁸ 15 U.S.C. 78f(b)(6).

²⁰⁹ 15 U.S.C. 78f(b)(4).

²¹⁰ 15 U.S.C. 78o-3(b)(9).

²¹¹ See Section 6(b)(1) of the Exchange Act.

²¹² CAT NMS Plan Approval Order at 84697.

the SEC, and is therefore consistent with the Act.

The Exchange believes that the proposed fees paid by the CEBBs and CEBs are reasonable, equitably allocated and not unfairly discriminatory. First, the Historical CAT Assessment 1 fees to be collected are directly associated with the 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 Exchange has already incurred such development and implementation costs and the proposed Historical CAT Assessment 1 fees, therefore, would allow the Exchange to collect certain of such costs in a fair and reasonable manner from Industry Members, as contemplated by the CAT NMS Plan.

The proposed Historical CAT Assessment 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."²¹³ Similarly, in approving the CAT Funding Model, the SEC concluded that the CAT Funding Model met this standard.²¹⁴ 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 Historical CAT Assessment 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 Historical CAT Assessments as set forth in Section 11.3 of the CAT NMS Plan, including the formula for calculating the Historical Fee Rate, the identification of the parties responsible for payment and the transactions subject to the fee rate for the Historical CAT Assessment, is reasonable and satisfies the Exchange Act.²¹⁵ In each respect, as discussed above, Historical CAT Assessment 1 is calculated, and would be applied, in accordance with the requirements applicable to Historical CAT Assessments 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 Historical CAT Assessment 1 is reasonable and consistent with the Exchange Act. Calculation of the Historical Fee Rate for Historical CAT Assessment 1 requires the figures for the Historical CAT Costs 1, the executed equivalent share volume for the prior twelve months, the determination of Historical Recovery Period 1, and the projection of the executed equivalent share volume for Historical Recovery Period 1. Each of these variables is reasonable and

satisfies the Exchange Act, as discussed throughout this filing.

(A) Historical CAT Costs 1

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

a brief description of the amount and type of the Historical CAT Costs, 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.

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

Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan also requires that the fee filing provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate." As discussed below, the Exchange believes that the amounts set forth in this filing for each of these cost categories is "reasonable and appropriate." Each of the costs included in Historical CAT Costs 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 costs related to cloud hosting services as a part of Historical CAT Assessments.²¹⁶ CAT LLC determined that the costs related to cloud hosting services described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. As described above, the cloud hosting services costs reflect, among other things, the breadth of the CAT cloud activities, data volume 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

²¹³ CAT NMS Plan Approval Order at 84696.

²¹⁴ CAT Funding Model Approval Order at 62686.

²¹⁵ *Id.* at 62662–63.

²¹⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

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.²¹⁷ 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 day²¹⁸ and that annual operating costs for the CAT would range from \$36.5 million to \$55 million.²¹⁹ Through 2021, the actual data volumes have been five times that original estimate. The data volumes for each period are set forth in detail above.²²⁰

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 an amendment 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.²²¹

(ii) Technology: Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to operating fees as a part of Historical CAT Assessments.²²² CAT LLC determined that the costs related to operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The operating fees 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.²²³ 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.²²⁴ The services performed by FCAT for each period and the costs related to such services are described above.²²⁵

(iii) Technology: CAIS Operating Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to CAIS operating fees as a part of Historical CAT Assessments.²²⁶ CAT LLC determined that the costs related to CAIS operating fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. The CAIS operating fees 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 FCAT-negotiated fees for Kingland'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, were reasonable and appropriate.²²⁷ The services performed by Kingland for each period and the costs for each period are described above.²²⁸

(iv) Technology: Change Request Fees

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to change request fees as a part of Historical CAT

²¹⁷ For a discussion of the amount and type of cloud hosting services fees, see Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²¹⁸ Appendix D-4 of the CAT NMS Plan at n.262.

²¹⁹ CAT NMS Plan Approval Order at 84801.

²²⁰ See Sections 3(a)(2)(B)(i)(a), 3(a)(2)(B)(ii)(a), 3(a)(2)(B)(iii)(a) and 3(a)(2)(B)(iv)(A) above.

²²¹ 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).

²²² Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²³ See Section 3(a)(2)(B)(i)(b) above.

²²⁴ See Sections 3(a)(2)(B)(i)(b), 3(a)(2)(B)(ii)(b), 3(a)(2)(B)(iii)(b) and 3(a)(2)(B)(iv)(b) above.

²²⁵ *Id.*

²²⁶ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²²⁷ See Sections 3(a)(2)(B)(i)(c), 3(a)(2)(B)(ii)(c), 3(a)(2)(B)(iii)(c) and 3(a)(2)(B)(iv)(c) above.

²²⁸ *Id.*

Assessments.²²⁹ CAT LLC determined that the costs related to change request fees described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 determined that the change requests were necessary to implement the CAT. As described above, the change requests cover various technology changes, including, for example, changes related to CAT reporting, data feeds and exchange functionality. CAT LLC also determined that the costs for each change request were appropriate for the relevant technology change. A description of the change requests for each FAM Period and their total costs are set described above.²³⁰ As noted above, the total costs for change requests through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.25% of Historical CAT Costs 1.

(v) Capitalized Developed Technology Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to capitalized developed technology costs as a part of Historical CAT Assessments.²³¹ Capitalized developed technology costs include costs related to 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 costs for each period are described in more detail above.²³² CAT LLC determined that these costs are reasonable and should be included as a part of Historical CAT Costs 1.

These costs involve the activity of both the Initial Plan Processor and FCAT, as the successor Plan Processor.²³³ With regard to the Initial Plan Processor, the Participants utilized an RFP to seek proposals to build and

operate the CAT, receiving a number of proposals in response to the RFP. The Participants carefully reviewed and considered each of the proposals, including holding in-person meetings with each of the Bidders. After several rounds of review, the Participants selected the Initial Plan Processor in accordance with the CAT NMS Plan. CAT LLC entered into an agreement with the Initial Plan Processor in which CAT LLC would pay the Initial Plan Processor a negotiated, fixed price fee.²³⁴ In addition, as described above, CAT LLC determined that it was appropriate to enter into an agreement with FCAT as the successor Plan Processor.²³⁵

(vi) Legal

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover costs related to legal fees as a part of Historical CAT Assessments.²³⁶ CAT LLC determined that the legal costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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 issues associated with the CAT, the scope of the necessary legal services are substantial. CAT LLC determined that the scope of the legal services is necessary to implement and maintain the CAT and that the legal rates reflect the specialized services necessary for such a project. When hiring each law firm for a CAT project, CAT LLC interviewed multiple firms, and determined to hire each firm based on a variety of factors, including the relevant expertise and fees. In each case, CAT LLC determined that the hourly fee rates were in line with market rates for the specialized legal expertise. In addition, CAT LLC determined that the total costs incurred for each CAT project were appropriate given the breadth of services provided. The services performed by each law firm for each period and the costs related to such services are described above.²³⁷

(vii) Consulting

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover consulting costs as a part of

Historical CAT Assessments.²³⁸ CAT LLC determined that the consulting costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. Because there are no CAT employees²³⁹ and because of the significant number of issues associated with the CAT, the consultants provided assistance in the management of various CAT matters and the processes related to such matters.²⁴⁰ CAT LLC considered a variety of factors in choosing a consulting firm and determined to select Deloitte after an interview process.²⁴¹ CAT LLC also determined that the consulting services were provided at reasonable market rates, as the fees were negotiated annually and comparable to the rates charged by other consulting firms for similar work.²⁴² Moreover, the total costs for such consulting services were appropriate in light of the breadth of services provided by Deloitte. The services performed by Deloitte and the costs related to such services are described above.²⁴³

(viii) Insurance

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover insurance costs as a part of Historical CAT Assessments.²⁴⁴ CAT LLC determined that the insurance costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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."²⁴⁵ In selecting the insurance providers for these policies, CAT LLC engaged in an evaluation of alternative insurers, including a comparison of the pricing

²³⁸ Section 11.3(b)(iii)(B)(II)(B)(3) of the CAT NMS Plan.

²³⁹ 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).

²⁴⁰ 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.

²⁴¹ See Section 3(a)(2)(B)(i)(g) above.

²⁴² See Sections 3(a)(2)(B)(i)(g), 3(a)(2)(B)(ii)(g), 3(a)(2)(B)(iii)(g) and 3(a)(2)(B)(iv)(g) above.

²⁴³ *Id.*

²⁴⁴ Section 11.3(b)(iii)(B)(II)(B)(4) of the CAT NMS Plan.

²⁴⁵ Section 4.1.5 of appendix D of the CAT NMS Plan.

²²⁹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³⁰ See Sections 3(a)(2)(B)(i)(d), 3(a)(2)(B)(ii)(d), 3(a)(2)(B)(iii)(d) and 3(a)(2)(B)(iv)(d) above.

²³¹ Section 11.3(b)(iii)(B)(II)(B)(1) of the CAT NMS Plan.

²³² See Sections 3(a)(2)(B)(i)(e), 3(a)(2)(B)(ii)(e), 3(a)(2)(B)(iii)(e) and 3(a)(2)(B)(iv)(e) above.

²³³ *Id.*

²³⁴ See Section 3(a)(2)(B)(i)(e) above.

²³⁵ See Section 3(a)(2)(B)(i)(b) above.

²³⁶ Section 11.3(b)(iii)(B)(II)(B)(2) of the CAT NMS Plan.

²³⁷ See Sections 3(a)(2)(B)(i)(f), 3(a)(2)(B)(ii)(f), 3(a)(2)(B)(iii)(f) and 3(a)(2)(B)(iv)(f) above.

offered by the alternative insurers.²⁴⁶ Based on this analysis, CAT LLC determined that the selected insurance policies provided appropriate coverage at reasonable market rates.²⁴⁷

(ix) Professional and Administration

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover professional and administration costs as a part of Historical CAT Assessments.²⁴⁸ CAT LLC determined that the professional and administration costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 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.

CAT LLC determined to hire a financial advisory firm, Anchin, to assist with financial matters for the CAT. CAT LLC interviewed Anchin as well as other potential financial advisory firms to assist with the CAT project, considering a variety of factors in its analysis, including the firm's relevant expertise and fees.²⁴⁹ The hourly fee rates for this firm were in line with market rates for the financial advisory services provided.²⁵⁰ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Anchin. The services performed by Anchin and the costs related to such services are described above.²⁵¹

CAT LLC also determined to engage an independent accounting firm, Grant Thornton, to complete the audit of CAT LLC's financial statements, in accordance with the requirements of the CAT NMS Plan. CAT LLC interviewed this firm as well as another potential accounting firm to audit CAT LLC's financial statements, considering a variety of factors in its analysis, including the relevant expertise and fees of each of the firms. CAT LLC determined that Grant Thornton was well-qualified for the role given the

balance of these considerations.²⁵² Grant Thornton's fixed fee rate compensation arrangement was reasonable and appropriate, and in line with the market rates charged for these types of accounting services.²⁵³ Moreover, the total costs for such financial advisory services was appropriate in light of the breadth of services provided by Grant Thornton. The services performed by Grant Thornton and the costs related to such services are described above.²⁵⁴

The professional and administrative costs also include costs related to the receipt of certain market data from Exegy. After performing an analysis of the available market data vendors to confirm that the data provided met the SIP Data requirements of the CAT NMS Plan and comparing the costs of the vendors providing the required SIP Data, CAT LLC determined to purchase market data from Exegy. Exegy provided the data elements required by the CAT NMS Plan, and the fees were reasonable and in line with market rates for the market data received.²⁵⁵

The professional and administrative costs also include costs related to a third party security assessment of the CAT performed by RSM. The assessment was designed to verify and validate the effective design, implementation and operation of the controls specified by NIST Special Publication 800–53, Revision 4 and related standards and guidelines. Such a security assessment is in line with industry practice and important given the data included in the CAT. CAT LLC determined to engage RSM to perform the security assessment, after considering a variety of factors in its analysis, including the firm's relevant expertise and fees. The fees were reasonable and in line with market rates for such an assessment.²⁵⁶

(x) Public Relations Costs

In approving the CAT Funding Model, the SEC recognized that it is appropriate to recover public relations costs as a part of Historical CAT Assessments.²⁵⁷ CAT LLC determined that the public relations costs described in this filing are reasonable and should be included as a part of Historical CAT Costs 1. CAT LLC determined that the types of public relations services utilized were beneficial to the CAT and market participants more generally. Public

relations services were 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.²⁵⁸ By engaging a public relations firm, CAT LLC was better positioned to understand and address CAT issues to the benefit of all market participants.²⁵⁹ Moreover, CAT LLC determined that the rates charged for such services were in line with market rates.²⁶⁰ As noted above, the total public relations costs through FAM Period 3 represent a small percentage of Historical CAT Costs 1—that is, 0.1% of Historical CAT Costs 1.

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

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. 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 will count executed equivalent shares for CAT billing purposes.

(C) Historical Recovery Period 1

CAT LLC has determined to establish a Historical Recovery Period of 24 months for Historical CAT Assessment 1 and that such length is reasonable. CAT LLC determined that the length of Historical Recovery Period 1 appropriately weighs the need for a reasonable Historical Fee Rate 1 that spreads the Historical CAT Costs over an appropriate amount of time and the need to repay the loans notes to the Participants in a timely fashion. CAT LLC determined that 24 months for Historical Recovery Period 1 would establish a fee rate that is lower than other transaction-based fees, including fees assessed pursuant to Section 31.²⁶¹ In addition, in establishing a Historical Recovery Period of 24 months, CAT LLC recognized that the total costs for Historical CAT Assessment 1 was less than the total costs for 2022 and 2023, and therefore it would be appropriate to recover those costs in two years.

²⁴⁶ See Sections 3(a)(2)(B)(i)(h), 3(a)(2)(B)(ii)(h), 3(a)(2)(B)(iii)(h) and 3(a)(2)(B)(iv)(h) above.

²⁴⁷ *Id.*

²⁴⁸ See Section 11.3(b)(iii)(B)(II)(B)(5) of the CAT NMS Plan.

²⁴⁹ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁰ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵¹ *Id.*

²⁵² See Section 3(a)(2)(B)(i)(i) above.

²⁵³ See Sections 3(a)(2)(B)(i)(i), 3(a)(2)(B)(ii)(i), 3(a)(2)(B)(iii)(i) and 3(a)(2)(B)(iv)(i) above.

²⁵⁴ *Id.*

²⁵⁵ See Section 3(a)(2)(B)(i)(i) above.

²⁵⁶ *Id.*

²⁵⁷ See Section 11.3(b)(iii)(B)(II)(B)(6) of the CAT NMS Plan.

²⁵⁸ See Section 3(a)(2)(B)(i)(j) above.

²⁵⁹ See Sections 3(a)(2)(B)(i)(j), 3(a)(2)(B)(ii)(j), 3(a)(2)(B)(iii)(j) and 3(a)(2)(B)(iv)(j) above.

²⁶⁰ *Id.*

²⁶¹ As the SEC noted in the CAT Funding Model Approval Order, recent Section 31 fees ranged from \$0.00009 per share to \$0.0004 per share. CAT Funding Model Approval Order at 62682.

(D) Projected Executed Equivalent Share Volume for Historical Recovery Period 1

CAT LLC has determined to calculate the projected total executed equivalent share volume for the 24 months of Historical Recovery Period 1 by doubling the executed equivalent share volume for the prior 12 months. 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, 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 Historical Recovery Period 1 is projected to be 7,961,507,681,810.42 executed equivalent shares.²⁶²

(E) Actual Fee Rate for Historical CAT Assessment 1

(i) Decimal Places

As noted in the Plan amendment for the CAT Funding Model, as a practical matter, the fee filing for a Historical CAT Assessment would provide the exact fee per executed equivalent share to be paid for each Historical CAT Assessment, by multiplying the Historical Fee Rate by one-third and describing the relevant number of decimal places for the fee rate.²⁶³ Accordingly, proposed paragraph (a)(1)(B) of the fee schedule would set forth a fee rate of \$0.000013 per executed equivalent share. This fee rate is calculated by multiplying Historical Fee Rate 1 by one-third, and rounding the result to 6 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.

(ii) Reasonable Fee Level

The Exchange believes that imposing Historical CAT Assessment 1 with a fee rate of \$0.000013 per executed equivalent share is reasonable because it provides for a revenue stream for the Company that is aligned with Historical CAT Costs 1 and such costs would be spread out over an appropriate recovery period, as discussed above. Moreover, the Exchange believes that the level of

the fee rate is reasonable, as it is comparable to other transaction-based fees. Indeed, Historical CAT Assessment 1 is significantly lower than fees assessed pursuant to Section 31 (e.g., \$0.0009 per share to 0.0004 per share),²⁶⁴ and, as a result, the magnitude of Historical CAT Assessment 1 is small, and therefore will mitigate any potential adverse economic effects or inefficiencies.²⁶⁵ Furthermore, the reasonable fee rate for Historical CAT Assessment 1 further supports CAT LLC's decision to seek to recover all Historical CAT Costs prior to 2022, rather than establishing separate Historical CAT Assessments for pre-FAM, FAM 1, FAM 2 and FAM 3 costs.

(3) Historical CAT Assessment 1 Provides for an Equitable Allocation of Fees

Historical CAT Assessment 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 Historical CAT Assessments as well as the Industry Members to be charged the Historical CAT Assessments.²⁶⁶ In approving the CAT Funding Model, the SEC stated that "[t]he Participants have sufficiently demonstrated that the proposed allocation of fees is reasonable."²⁶⁷ Accordingly, the CAT Funding Model sets forth the requirements for allocating fees related to Historical CAT Costs among Participants and Industry Members, and the fee filings for Historical CAT Assessments must comply with those requirements.

Historical CAT Assessment 1 provides for an equitable allocation of fees as it complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. For example, as described above, the calculation of Historical CAT Assessment 1 complies with the formula set forth in Section 11.3(b) of the CAT NMS Plan. In addition, Historical CAT Assessment 1 would be charged to CEBBs and CEBs in accordance with Section 11.3(b) of the CAT NMS Plan. Furthermore, the Participants would continue to remain responsible for their designated share of Past CAT Costs through the cancellation

of loans made by the Participants to CAT LLC.

In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1—Historical CAT Costs 1 (including Excluded Costs), the count for the executed equivalent share volume for the prior 12 months, the length of the Historical Recovery Period, and the projected executed equivalent share volume for the Historical Recovery Period—are reasonable. Moreover, these inputs lead to a reasonable fee rate for Historical CAT Assessment 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) Historical CAT Assessment 1 Is Not Unfairly Discriminatory

Historical CAT Assessment 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 Historical CAT Assessments 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. Historical CAT Assessment 1 complies with the requirements regarding the calculation of Historical CAT Assessments as set forth in the CAT NMS Plan. In addition, as discussed above, each of the inputs into the calculation of Historical CAT Assessment 1 and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Assessment 1 does not impose an unfairly discriminatory fee on Industry Members.

Finally, 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 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

²⁶² This projection was calculated by multiplying 3,980,753,840,905.21 executed equivalent shares by two.

²⁶³ CAT Funding Model Approval Order at 62658, n.658.

²⁶⁴ CAT Funding Model Approval Order at 62663, 62682.

²⁶⁵ *Id.*

²⁶⁶ See Section 11.3(b) of the CAT NMS Plan.

²⁶⁷ CAT Funding Model Approval Order at 62629.

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 Act²⁶⁸ 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 Historical CAT Assessment 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 Historical CAT Assessment 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.²⁶⁹ 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. Historical CAT

Assessment 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 Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 calculated in accordance with the CAT Funding Model is reasonable. Therefore, Historical CAT Assessment 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 Act²⁷⁰ and Rule 19b-4(f)(2) thereunder,²⁷¹ 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-BX-2024-032 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-2024-032. 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-2024-032 and should be submitted on or before October 2, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷²

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-20466 Filed 9-10-24; 8:45 am]

BILLING CODE 8011-01-P

²⁶⁸ 15 U.S.C. 78f(b)(8).

²⁶⁹ CAT Funding Model Approval Order at 62676-86.

²⁷⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²⁷¹ 17 CFR 240.19b-4(f)(2).

²⁷² 17 CFR 200.30-3(a)(12).



FEDERAL REGISTER

Vol. 89

Wednesday,

No. 176

September 11, 2024

Part IX

The President

Notice of September 9, 2024—Continuation of the National Emergency
With Respect to Certain Terrorist Attacks
Notice of September 9, 2024—Continuation of the National Emergency
With Respect to Foreign Interference in or Undermining Public Confidence
in United States Elections

Presidential Documents

Title 3—

Notice of September 9, 2024

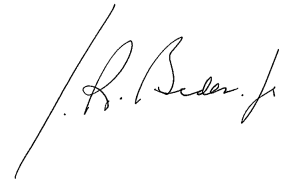
The President

Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency previously declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency must continue in effect beyond September 14, 2024. Therefore, I am continuing in effect for an additional year the national emergency that was declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 9, 2024.

Presidential Documents

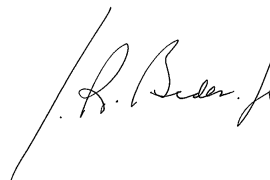
Notice of September 9, 2024

Continuation of the National Emergency With Respect to Foreign Interference in or Undermining Public Confidence in United States Elections

On September 12, 2018, by Executive Order 13848, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the threat of foreign interference in or undermining public confidence in United States elections.

Although there has been no evidence of a foreign power altering the outcomes or vote tabulation in any United States election, foreign powers have historically sought to exploit America's free and open political system. In recent years, the proliferation of digital devices and internet-based communications has created significant vulnerabilities and magnified the scope and intensity of the threat of foreign interference. The ability of persons located, in whole or in substantial part, outside the United States to interfere in or undermine public confidence in United States elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on September 12, 2018, must continue in effect beyond September 12, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13848 with respect to the threat of foreign interference in or undermining public confidence in United States elections.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

A handwritten signature in black ink, appearing to read "R. B. Biden", is written over a diagonal line that extends from the bottom left towards the top right.

THE WHITE HOUSE,
September 9, 2024.

[FR Doc. 2024-20800
Filed 9-10-24; 11:15 am]
Billing code 3395-F4-P

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Federal Register

Vol. 89, No. 176

Wednesday, September 11, 2024

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

71153-71794.....	3
71795-72278.....	4
72279-72714.....	5
72715-72956.....	6
72957-73248.....	9
73249-73554.....	10
73555-74104.....	11

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

Proclamations:

10795.....	72279
10796.....	72283
10797.....	72285
10798.....	72287
10799.....	72289
10800.....	72291
10801.....	72293
10802.....	72295
10803.....	73249
10804.....	73555
10805.....	73557

Executive Orders:

14126.....	73559

Administrative Orders:

Memorandums:

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

Memorandum of

August 16, 2024.....	71799

Memorandum of

August 23, 2024.....	71801

Notices:

Notice of September 6,	
2024.....	73251

Notice of September 9,	
2024.....	74101

Notice of September 9,	
2024.....	74103

Presidential

Determinations:

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

5 CFR

1200.....	72957
1201.....	72957
1203.....	72957
1209.....	72957

9 CFR

317.....	73253
381.....	73253
412.....	73253

10 CFR

72.....	72299, 72304
73.....	73257
1703.....	73258

Proposed Rules:

72.....	72342, 72344
1008.....	73312

11 CFR

Proposed Rules:

104.....	72346

12 CFR

Proposed Rules:

613.....	72759

13 CFR

Proposed Rules:

126.....	72763

14 CFR

39.....	72309, 72312, 72966,
	72968, 72971, 72974, 72976,
	73260, 73262, 73264, 73267,
	73269

61.....	73271

71.....	72981, 73272, 73273

Proposed Rules:

25.....	73604
39.....	73003, 73009, 73014,
	73316, 73608
71.....	71189, 71191, 71863,
	72765, 73020, 73022

15 CFR

734.....	71803

736.....	72926

738.....	72926

740.....	71803, 72926

742.....	72926

743.....	72926

744.....	71803

746.....	71803

772.....	72926

774.....	71803, 72926

Proposed Rules:

702.....	73612

16 CFR

Proposed Rules:

1112.....	73024
1226.....	73320
1250.....	73024

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
270.....	73764
274.....	73764
19 CFR	
12.....	73274, 73280
21 CFR	
573.....	72315
862.....	72982
864.....	72315
866.....	73565
870.....	72317
872.....	71153, 72320
876.....	72715, 72984
882.....	71155
886.....	72322
888.....	71157
890.....	71159
24 CFR	
Proposed Rules:	
5.....	72766

26 CFR	
1.....	73568
Proposed Rules:	
1.....	71193, 71214, 71864
301.....	71214, 72348
27 CFR	
Proposed Rules:	
4.....	73050
5.....	73050
19.....	73050
24.....	73050
26.....	73050
27.....	73050
30 CFR	
550.....	71160
31 CFR	
548.....	72717
587.....	72717, 72718, 72719
591.....	72986
1010.....	72156
1032.....	72156
32 CFR	
Proposed Rules:	
3.....	71865
33 CFR	
100.....	71821, 71823, 71824, 72323, 72327, 72721
117.....	71184
165.....	71824, 72329, 72987, 72989, 73289, 73291

Proposed Rules:	
100.....	72348
165.....	73054, 73055
36 CFR	
214.....	72990
251.....	72990
Proposed Rules:	
1191.....	71215
38 CFR	
Proposed Rules:	
21.....	72351
40 CFR	
52.....	71185, 71826, 71830, 72721, 73568
63.....	73293
81.....	71830
84.....	73588
98.....	71838
180.....	72994
271.....	73592
300.....	72331
705.....	72336
Proposed Rules:	
52.....	71230, 71237, 71872, 72353, 72770
55.....	73617
63.....	72355
180.....	72775
300.....	72356
705.....	72362
42 CFR	
88.....	73592

423.....	72998
43 CFR	
8360.....	72999
45 CFR	
170.....	72998
46 CFR	
Proposed Rules:	
401.....	71877
47 CFR	
11.....	72724
63.....	73601
64.....	71848
73.....	72738
Proposed Rules:	
64.....	73321
90.....	72780
96.....	72780
50 CFR	
17.....	72739, 73308
300.....	73602
622.....	71860
648.....	72758
679.....	71861, 72340, 73002
Proposed Rules:	
17.....	72362, 73330, 73512
622.....	72794
635.....	72796

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

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