

VIA EMAIL (rule-comments@sec.gov)

June 13, 2024

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Nos. SR-BOX-2024-03, SR-CboeBYX-002, SR-CboeBZX-004, SR-C2-2024-002, SR-Cboe-EDGA-2024-002, SR-CboeEDGX-2024-005, SR-CBOE-2024-003, SR-FINRA-2024-002, SR-IEX-2024-01, SR-LTSE-2024-02, SR-MEMX-2024-01, SR-MIAX-2024-02, SR-EMERALD-2024-01, SR-PEARL-2024-01, SR-PEARL-2024-02, SR-BX-2024-002, SR-GEMX-2024-02, SR-ISE-2024-02, SR-MRX-2024-01, SR-PHLX-2024-01, SR-NASDAQ-2024-001, SR-NYSE-2024-03, SR-NYSEAMER-2024-02, SR-NYSEARCA-2024-02, SR-NYSECHX-2024-02 and SR-NYSENAT-2024-01

Dear Ms. Countryman:

Each Participant¹ in the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”)² filed with the Securities and Exchange Commission (“SEC” or “Commission”) fee filings to implement Historical CAT Assessment 1 (the “CAT Fee Filings”) in accordance with the funding model under the CAT NMS Plan (the “CAT Funding Model”). On January 17, 2024, the Commission published the CAT Fee Filings for public comment, suspended them and instituted proceedings to determine whether the CAT Fee Filings

¹ The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc.

² The Limited Liability Company Agreement of Consolidated Audit Trail, LLC is the CAT NMS Plan. Unless otherwise defined herein, capitalized terms are defined as set forth in the CAT NMS Plan and the Proposing Release.

should be approved or disapproved.³ Commenters have submitted five substantive comment letters in response to the CAT Fee Filings.⁴ Consolidated Audit Trail, LLC (“CAT LLC”) submits this letter to respond to the topics raised in the comment letters to date.⁵

As described in the CAT Fee Filings, Historical CAT Assessment 1 is consistent with the applicable statutory requirements and with the requirements set forth in the Commission-approved CAT Funding Model. Contrary to commenters’ assertions that the CAT Fee Filings lack sufficient detail, the CAT Fee Filings contain scores of pages of highly detailed and granular information demonstrating that each of the costs described are reasonable and appropriate given the unprecedented scope and complexity of the CAT and the strict requirements of the CAT NMS Plan. Therefore, the CAT Fee Filings should be allowed to go into effect without further delay.

CAT LLC acknowledges that some commenters have long opposed—and will exhaust all possible means to avoid—*any* contribution to CAT costs by Industry Members. However, the funding of the CAT solely by the Participants is contrary to the CAT NMS Plan and Rule 613, and it is not a financially sustainable approach. The Participants have more than satisfied their obligation to provide “sufficient detail to demonstrate that Historical CAT Costs are reasonable and appropriate.”⁶ For over a decade, the significant economic costs of building and operating the CAT since Rule 613’s adoption in 2012—more than \$775 million through the end of 2023,

³ Securities Exchange Rel. Nos. 99377 (Jan. 17, 2024), 89 Fed. Reg. 10544 (Feb. 13, 2024) (BOX CAT Fee Filing); 99371 (Jan. 17, 2024), 89 Fed. Reg. 10963 (Feb. 13, 2024) (Cboe BYX CAT Fee Filing); 99369 (Jan. 17, 2024), 89 Fed. Reg. 10392 (Feb. 13, 2024) (Cboe BZX CAT Fee Filing); 99370 (Jan. 17, 2024), 89 Fed. Reg. 10430 (Feb. 13, 2024) (Cboe C2 CAT Fee Filing); 99374 (Jan. 17, 2024), 89 Fed. Reg. 10468 (Feb. 13, 2024) (Cboe EDGA CAT Fee Filing); 99376 (Jan. 17, 2024), 89 Fed. Reg. 10506 (Feb. 13, 2024) (Cboe EDGX CAT Fee Filing); 99364 (Jan. 17, 2024), 89 Fed. Reg. 10887 (Feb. 13, 2024) (Cboe CAT Fee Filing); 99363 (Jan. 17, 2024), 89 Fed. Reg. 10850 (Feb. 13, 2024) (FINRA CAT Fee Filing); 9937 (Jan. 17, 2024), 89 Fed. Reg. 11039 (Feb. 13, 2024) (IEX CAT Fee Filing); 99378 (Jan. 17, 2024), 89 Fed. Reg. 10582 (Feb. 13, 2024) (LTSE CAT Fee Filing); 99356 (Jan. 17, 2024), 89 Fed. Reg. 10697 (Feb. 13, 2024) (MEMX CAT Fee Filing); 99367 (Jan. 17, 2024), 89 Fed. Reg. 10925 (Feb. 13, 2024) (MIAX CAT Fee Filing); 99373 (Jan. 17, 2024), 89 Fed. Reg. 11001 (Feb. 13, 2024) (MIAX Emerald CAT Fee Filing); 99375 (Jan. 17, 2024), 89 Fed. Reg. 11116 (Feb. 13, 2024) (MIAX Pearl Options CAT Fee Filing); 99382 (Jan. 17, 2024), 89 Fed. Reg. (Feb. 13, 2024) (MIAX Pearl Equities CAT Fee Filing); 99358 (Jan. 17, 2024), 89 Fed. Reg. 10773 (Feb. 13, 2024) (Nasdaq BX CAT Fee Filing); 99365 (Jan. 17, 2024), 89 Fed. Reg. 10278 (Feb. 13, 2024) (Nasdaq GEMX CAT Fee Filing); 99362 (Jan. 17, 2024), 89 Fed. Reg. 10239 (Feb. 13, 2024) (Nasdaq ISE CAT Fee Filing”); 99361 (Jan. 17, 2024), 89 Fed. Reg. 10201 (Feb. 13, 2024) (Nasdaq MRX CAT Fee Filing); 99359 (Jan. 17, 2024), 89 Fed. Reg. 10164 (Feb. 13, 2024) (Nasdaq PHLX CAT Fee Filing); 99360 (Jan. 17, 2024), 89 Fed. Reg. 10812 (Feb. 13, 2024) (Nasdaq CAT Fee Filing); 99380 (Jan. 17, 2024), 89 Fed. Reg. 11078 (Feb. 13, 2024) (NYSE CAT Fee Filing); 99381 (Jan. 17, 2024), 89 Fed. Reg. 10620 (Feb. 13, 2024) (NYSE American CAT Fee Filing); 99357 (Jan. 17, 2024), 89 Fed. Reg. 10735 (Feb. 13, 2024) (NYSE Arca CAT Fee Filing); 99366 (Jan. 17, 2024), 89 Fed. Reg. 10315 (Feb. 13, 2024) (NYSE CHX CAT Fee Filing); and 99368 (Jan. 17, 2024), 89 Fed. Reg. 10353 (Feb. 13, 2024) (NYSE National CAT Fee Filing).

⁴ See Letters to Vanessa Countryman, Secretary, Commission, from Stephen John Berger, Managing Director, Global Head of Government & Regulatory Policy, Citadel Securities (Mar. 5, 2024) (“Citadel Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group (Mar. 9, 2024) (“FIA Letter”); Howard Meyerson, Managing Director, Financial Information Forum (Mar. 4, 2024) (“FIF Letter”); Ellen Greene, Managing Director, Equities & Options Market Structure and Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA (Mar. 5, 2024) (“SIFMA Letter”); and Thomas M. Merritt, Deputy General Counsel, Virtu Financial (Mar. 5, 2024) (“Virtu Letter”). An additional comment letter did not substantively address the CAT Fee Filings. See Letter from Edward Weisbaum (Feb. 6, 2024). The comment letters submitted in response to the Proposing Release are available at <https://www.sec.gov/comments/sr-finra-2024-002/srfinra2024002.htm>.

⁵ CAT LLC notes that the responses set forth in this letter represent the consensus of the Participants, but that not all Participants may fully agree with each response set forth in this letter.

⁶ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

and growing—have been borne entirely by the Participants via non-interest-bearing notes, foregoing tens of millions of dollars in interest.⁷ Continuing to require the Participants to shoulder the Historical CAT Costs alone is not fair or reasonable and is jeopardizing the continued viability of the CAT.

In this letter, CAT LLC responds in detail to the comments submitted in response to the CAT Fee Filings, and emphasizes the following:

- Historical CAT Assessment 1 complies with the Commission-approved CAT Funding Model. The current proceedings are to determine whether the CAT Fee Filings are reasonable and consistent with the Exchange Act, not, as some commenters urge, to amend the CAT Funding Model.
- CAT LLC appropriately seeks recovery of Historical CAT Costs pursuant to Historical CAT Assessment 1. As described in detail in the CAT Fee Filings and further below, the CAT costs sought to be recovered are reasonable and appropriate given stringent CAT NMS Plan requirements enforceable by the Commission. The reasonableness of Historical CAT Costs should be evaluated by the Commission as of the time they were incurred, not in hindsight.
- CAT LLC has satisfied the relevant Financial Accountability Milestones for Historical CAT Assessment 1.
- CAT LLC has provided significant information and assistance to Industry Members to allow for an orderly implementation of CAT fees.
- CAT LLC urges the Commission to allow the CAT Fee Filings to go into effect without further delay despite the Funding Model Litigation (as discussed below).

A. Historical CAT Assessment 1 Complies with the Commission-Approved CAT Funding Model

Historical CAT Assessment 1 complies with the requirements of the CAT Funding Model approved by the Commission.⁸ Commenters on the CAT Fee Filings revisit past arguments that were carefully and fully considered by the Commission when it approved the CAT Funding

⁷ By providing interest-free loans to CAT LLC through FAM 3, the Participants have saved CAT LLC approximately \$100 million in interest through May 2024. Specifically, based on the amount of the loans to CAT LLC (and its predecessor) through the end of FAM 3 and assuming the application of the prime rate, monthly compounding of interest and interest calculation based on the 365/365 method, CAT LLC would have owed \$100,648,000 in interest on the loans made to CAT LLC through FAM 3. Because the loans from the Participants to CAT LLC are interest-free, such costs are not included in the costs sought to be recovered pursuant to Historical CAT Assessment 1.

⁸ See Securities Exchange Act Rel. No. 98290 (Sept. 6, 2023), 88 Fed. Reg. 62628 (Sept. 12, 2023) (“CAT Funding Model Approval Order”); Article XI of the CAT NMS Plan.

Model.⁹ The current proceedings are to determine whether the CAT Fee Filings are reasonable and consistent with the Exchange Act, not to revisit the previous approval of the CAT Funding Model itself. Specifically, the Commission expressly considered each of the following arguments raised by the commenters in detail before approving the CAT Funding Model:

- Calculating Historical Fees Using Current Transaction Activity. Commenters revisit past arguments that current trading volumes should not be used to calculate historical fees under the CAT Funding Model.¹⁰ In the CAT Funding Model Approval Order, the Commission responded to such arguments in detail, noting, among other things, that it found it reasonable to rely on current transaction volumes to calculate historical fees due to the “substantial continuity” among the largest Industry Members from 2020 to 2023.¹¹
- Executing Brokers. Two commenters revisit past arguments that originating brokers, rather than executing brokers, should be required to pay CAT fees.¹² In the CAT Funding Model Approval Order, the Commission expressly considered whether CAT fees should be charged to originating brokers and, instead, found it reasonable to allocate fees to executing brokers.¹³
- Allocation of Costs between Participants and Industry Members. Two commenters revisit past arguments that the CAT Funding Model is flawed because it is based on an unreasonable and inequitable allocation of costs, two-thirds of which are paid by Industry Members.¹⁴ The Commission responded to such arguments in detail when it approved the CAT Funding Model and concluded that the allocation of fees was reasonable.¹⁵
- Fee Pass-Throughs. Several commenters revisit past arguments regarding the possibility that the Participants might decide to pass on their one-third allocation of CAT fees to Industry Members.¹⁶ In the CAT Funding Model Approval Order, the Commission recognized explicitly that Participants might elect to pass fees on to Industry Members but emphasized that the rule filing process under Section 19(b) of the Exchange Act and Rule 19b-4 thereunder will protect Industry Members from any such fees that are unreasonable, inequitable, or unfairly discriminatory.¹⁷ The Commission further recognized that some Industry Members might choose to pass through their CAT fees to

⁹ *Id.*

¹⁰ SIFMA Letter at 6; Virtu Letter at 7-8.

¹¹ CAT Funding Model Approval Order at 62662-63.

¹² FIF Letter at 4-5; Virtu Letter at 5-6.

¹³ CAT Funding Model Approval Order at 62646-49. Similarly, one commenter suggests that CAT LLC “should bill for off-exchange transactions based on MEOTs and not based on CAT events reported by FINRA.” FIF Letter at 13. In the CAT Funding Model Approval Order, the SEC decided this issue when it approved the CAT Funding Model. *See, e.g.*, Section 1.1 of the CAT NMS Plan (definition of “CAT Executing Broker”).

¹⁴ Citadel Letter at 3; Virtu Letter at 4-5.

¹⁵ *Id.* at 62645.

¹⁶ Citadel Letter at 2-3; SIFMA Letter at 13-14; and Virtu Letter at 5.

¹⁷ CAT Funding Model Approval Order at 62636-37.

their customers;¹⁸ indeed, several comments described below indicate that many firms intend to do so.

- Simultaneous Collection of More Than One CAT Fee. One commenter objected to the permissibility of collecting more than one Historical CAT Assessment at a time.¹⁹ The CAT Funding Model allows for the collection of “one or more Historical CAT Assessments,” without limiting the timeframes for their collection.²⁰
- TRF/ORF/ADF Transaction Involving a Broker-Dealer That is Not a FINRA Member. In a transaction involving a broker-dealer that is not a FINRA member, FIF objects to charging the FINRA member for both sides of the trade.²¹ In the CAT Funding Model Approval Order, the SEC specifically approved this approach.²²
- Efficiency, Competition, and Capital Formation. One commenter argued that the Commission failed to undertake the required economic analysis or to consider the impact of the CAT Funding Model on market efficiency, competition, and capital formation.²³ On the contrary, the Commission undertook an analysis of the effect of the CAT Funding Model on efficiency, competition, and capital formation, concluding that the CAT Funding Model would not have an adverse impact on market efficiency, competition, or capital formation.²⁴
- Disclosure of AWS Contract. Several commenters reiterate prior arguments urging CAT LLC and the Commission to publicly share the contract with AWS regarding cloud hosting services for CAT.²⁵ The SEC specifically declined commenters’ previous requests to mandate the publication of a contract between private parties.²⁶

B. CAT LLC Appropriately Seeks Recovery of Historical CAT Costs Pursuant to Historical CAT Assessment 1

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

¹⁸ *Id.*

¹⁹ FIA Letter at 4.

²⁰ Section 11.3(b) of the CAT NMS Plan.

²¹ FIF Letter at 14-15.

²² The definition of “CAT Executing Broker” states that “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.” Section 1.1 of the CAT NMS Plan.

²³ Citadel Letter at 3.

²⁴ *See* CAT Funding Model Approval Order at 62676-86.

²⁵ SIFMA Letter at 11.

²⁶ CAT Funding Model Approval Order at 62552, n.524. (“The Commission declines to mandate the publication of a contract between private parties. Similarly, the Commission declines to mandate the publication of AWS invoices. The Participants can choose to publish this information if they believe it is appropriate.”).

CAT Assessment 1.²⁷ As described in detail in the CAT Fee Filings and in further detail below, the CAT costs to be recovered for each category are reasonable. Commenters have raised questions about the reasonableness of certain costs described in the CAT Fee Filings, including (1) costs incurred prior 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) Customer Account and Information System (“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.

1. Costs Incurred Prior to the Effective Date of CAT NMS Plan

One commenter questioned whether Industry Members should be responsible for any 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.²⁸ CAT LLC continues to believe that the recovery of such costs is appropriate, and the amount and scope of such costs as described in the CAT Fee Filings are reasonable.

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”).²⁹ 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-

²⁷ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

²⁸ Citadel Letter at 8.

²⁹ See, e.g., Rule 613(a)(1)(vii)(D) of the CAT NMS Plan.

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 were described in detail in the CAT Fee Filings and are described further below.³⁰ 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 613.³¹

a. 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.³²

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.³³ 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

³⁰ See, e.g., FINRA CAT Fee Filing at 10856-59.

³¹ 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>.

³² 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.

³³ For example, in its comments on proposed Rule 613, FIF suggested “that the SROs should select the processor through a ‘request for proposal.’” Securities Exchange Act Rel. No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45785 (Aug. 1, 2013) (“Rule 613 Adopting Release”).

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.³⁴

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.³⁵ 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.”³⁶

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.³⁷ 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’).” 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.”³⁸

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

³⁴ Rule 613 Adopting Release at 45738-39.

³⁵ Rule 613 Adopting Release at 45739.

³⁶ Securities Exchange Act Rel. No. 71596 (Feb. 21, 2014), 79 Fed. Reg. 11152, 11152 (Feb. 27, 2014) (“Selection Plan Approval Order”).

³⁷ *Id.*

³⁸ Selection Plan Approval Order at 11159.

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.

b. 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").³⁹ The Commission approved the Selection Plan as filed on February 21, 2014.⁴⁰ 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."⁴¹

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":

³⁹ See Securities Exchange Act Rel. No. 70892 (Nov. 15, 2013), 78 Fed. Reg. 69910 (Nov. 21, 2013).

⁴⁰ See Selection Plan Approval Order.

⁴¹ Selection Plan Approval Order at 11160.

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.⁴²

c. 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 Development Advisory Group (the “DAG”) to solicit more input from a representative industry group.⁴³

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.

⁴² See Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696, 84737 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”).

⁴³ See Section D(11) of Appendix C of the CAT NMS Plan.

d. 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.”⁴⁴ 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.⁴⁵ The Participants filed two supplements to the request for exemptive relief.⁴⁶

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.⁴⁷ 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.⁴⁸

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

⁴⁴ Securities Exchange Rel. No. 77265 (Mar. 1, 2016), 81 Fed. Reg. 11856 (Mar. 7, 2016) (“2016 Exemptive Order”).

⁴⁵ Letter from Robert Colby, FINRA, on behalf of the SROs, to Brent J. Fields, Secretary, Commission (Jan. 30, 2015).

⁴⁶ 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).

⁴⁷ See 2016 Exemptive Order.

⁴⁸ *Id.* at 11857.

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).⁴⁹

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.

e. 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.⁵⁰

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.⁵¹ The SEC determined that both extensions were appropriate, in the public interest, and consistent with the protection of investors.⁵² 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.”⁵³ The SEC also noted the following:

⁴⁹ *Id.*

⁵⁰ Securities Exchange Act Rel. No. 69060 (Mar. 7, 2013), 78 Fed. Reg. 15771, 15772 (Mar. 12, 2013) (“March 2013 Exemptive Order”).

⁵¹ *See* March 2013 Exemptive Order; Securities Exchange Act Rel. No. 71018 (Dec. 6, 2013), 78 Fed. Reg. 75669 (Dec. 12, 2013) (“December 2013 Exemptive Order”).

⁵² March 2013 Exemptive Order at 15772; December 2013 Exemptive Order at 75670.

⁵³ March 2013 Exemptive Order at 15772.

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.⁵⁴

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.

f. 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 2016.⁵⁵ Following the comment period, the SEC approved the Plan in November 2016.⁵⁶

g. 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 in the CAT Fee Filings.⁵⁷ 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 were described in detail in the CAT Fee Filings 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;

⁵⁴ *Id.* at 15773.

⁵⁵ *See* Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 Fed. Reg. 30614 (May 17, 2016).

⁵⁶ *See* CAT NMS Plan Approval Order.

⁵⁷ *See, e.g.*, FINRA CAT Fee Filing at 10856-59.

- 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.

h. 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 in the CAT Fee Filings.⁵⁸ 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;

⁵⁸

Id.

- 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.

i. 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 were described in detail in the CAT Fee Filings.⁵⁹ 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.

2. 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 has provided extensive information demonstrating that the costs related to cloud hosting services described in the CAT Fee Filings are reasonable and appropriate given

⁵⁹ *Id.*

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.

a. Reasonableness of AWS Costs Given the Requirements of the CAT NMS Plan

Commenters have questioned whether 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.⁶⁰ These comments challenge the reasonableness of such costs only in the abstract. The proper analysis is whether these costs are reasonable *given the strict data processing timeline, storage and other technical requirements under the Commission-approved CAT NMS Plan*. 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.

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 in the CAT Fee Filings,⁶¹ the cloud hosting services costs reflect a variety of factors including, among other things:

- **Breadth of Cloud Activities.** AWS was engaged by FINRA CAT, LLC (“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

⁶⁰ See Citadel Letter at 9-13; SIFMA Letter at 10-11; FIA Letter at 3.

⁶¹ See, e.g., CAT Funding Model Approval Order at 10853-54.

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.

Several commenters also have correctly noted that various requirements of the CAT NMS Plan adopted pursuant to Rule 613 contribute to the significant cloud hosting services costs,⁶² 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,⁶³ 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.

b. Effect of CAT Design on CAT Costs

i. Efficient CAT Design

Certain commenters have questioned whether the CAT's design is responsible for the significant AWS compute and storage costs, that is, whether CAT is designed to most efficiently utilize cloud computing and storage services.⁶⁴ Again, these comments obscure the actual issue—*i.e.*, whether the design of the CAT is reasonable *given the requirements of the Commission-approved CAT NMS Plan, including requirements related to security, operational reliance and quality assurance, and maintainability*. The architectural design for CAT satisfies these requirements efficiently and effectively.

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

⁶² See, e.g., SIFMA Letter at 10 (noting that “Commission staff direction in the design and build of the CAT system have also led the CAT to incur significant and unnecessary costs”).

⁶³ See Section B(4) of this letter for a discussion of the litigation with the SEC.

⁶⁴ FIA Letter at 9; SIFMA Letter at 10.

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 for 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.⁶⁵

ii. CAT Was Designed to Minimize Industry Member Effort

Some commenters have lost sight of the fact that the CAT System 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. It is disingenuous for the industry to now criticize CAT LLC for costs related to the design of CAT, which includes those very accommodations.

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.⁶⁶ The Industry Member Technical Specifications allow for dozens of specific event types, which drive complexity

⁶⁵ See, e.g., Securities Exchange Act Rel. No. 99938 (Apr. 10, 2024), 89 Fed. Reg. 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).

⁶⁶ See CAT Industry Member Reporting Scenarios v.4.10 (Oct. 21, 2022).

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 “The 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.”⁶⁷ 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.⁶⁸

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,

⁶⁷ Letter from Janet Early, FIF, to Thesys CAT (Mar. 29, 2018).

⁶⁸ Letter from Christopher Bok, FIF, to Jay Clayton, Chair, Commission, at 4 (Dec. 11, 2018).

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.⁶⁹

CAT provides such a flexible input format.

iii. Effect of Initial Plan Processor Design

Certain commenters have posited that the costs for cloud hosting services may be excessive due to residual design issues from the efforts of Thesys, the Initial Plan Processor.⁷⁰ CAT LLC disagrees with this assertion. 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.

⁶⁹ 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>.

⁷⁰ SIFMA Letter at 10.

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.

c. Consideration of AWS Alternatives

Contrary to certain commenters' assertions,⁷¹ CAT LLC specifically addressed the original selection of AWS by FCAT to provide cloud hosting services for the CAT project and the continued use of AWS by FCAT in the CAT Fee Filings. In the CAT Fee Filings, the Participants described the original selection of AWS in 2019:

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.⁷²

Furthermore, the CAT Fee Filings describe the decision to continue to utilize AWS's cloud hosting services as the project continued. The CAT Fee Filings noted that "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."⁷³

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."⁷⁴ 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.

⁷¹ FIA Letter at 3; SIFMA Letter at 11.

⁷² FINRA CAT Fee Filing at 10853.

⁷³ FINRA CAT Fee Filing at 10860.

⁷⁴ *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").

- 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, “Customers 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.”⁷⁵
- 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.”⁷⁶

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.

⁷⁵ Strategic Cloud Assessment Article.

⁷⁶ *Id.*

3. Funding Model Filings

Commenters have argued that the Commission should not allow the recovery of legal costs related to CAT LLC's multiple attempts to adopt prior funding models for the CAT.⁷⁷ CAT LLC continues to believe 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 in the CAT Fee Filings, 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."⁷⁸ 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."⁷⁹ In keeping with these provisions, the Participants have provided a brief description of reasonably budgeted legal costs in their CAT Fee Filings. 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 in the CAT Fee Filings, 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, including comments on these CAT Fee Filings, demonstrate the complexity of the task.

⁷⁷ Citadel Letter at 9; FIA Letter at 3.

⁷⁸ Section 11.1(a)(i) of the CAT NMS Plan.

⁷⁹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

4. Costs Related to Litigation with the SEC

Commenters have argued that the Commission should not allow the recovery of legal costs related to the litigation with the SEC regarding the CAT NMS Plan.⁸⁰ CAT LLC continues to believe that the recovery of such legal costs is appropriate, and that the amount and scope of such costs, as described in the CAT Fee Filings, 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.⁸¹ 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.⁸²

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 in the CAT Fee Filings, 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 CAT Fee Filings. Commenters cannot simultaneously argue that CAT LLC has not adequately pushed back on the Commission's interpretation of specific CAT NMS Plan requirements from a cost perspective (and ultimately share in the cost savings resulting from the litigation), and that the costs of doing so should not be recoverable via a Historical CAT Assessment.

⁸⁰ Citadel Letter at 8; FIA Letter at 3.

⁸¹ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁸² Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 Fed. Reg. 77128, 77129-30 (Nov. 8, 2023).

5. Costs Related to the Initial Plan Processor

Commenters also have asserted that the Commission should not allow the recovery of *any* costs related to the services performed by Thesys, the Initial Plan Processor, including costs related to the transition to the successor Plan Processor.⁸³ CAT LLC disagrees.

In light of the one-year delay in the commencement of reporting to CAT, the CAT Fee Filings propose to exclude one year of CAT costs. Specifically, the Historical CAT Costs would exclude all CAT costs incurred from November 15, 2017 through November 15, 2018, not just costs related to Thesys. Such Excluded Costs total \$48,874,937, which amount includes \$37,852,083 in Thesys costs. CAT LLC continues to believe that excluding a full year's worth of costs from recovery through CAT fees assessed to Industry Members appropriately addresses the one-year delay in the implementation of the CAT System.

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.”⁸⁴ Following this process, the Participants notified the Commission of the selection of Thesys as the Initial Plan Processor on January 17, 2017.⁸⁵ 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.”⁸⁶

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

⁸³ Virtu Letter at 7; Citadel Letter at 8; SIFMA Letter at 8-10; FIA Letter at 2.

⁸⁴ CAT NMS Plan Approval Order at 84737.

⁸⁵ Letter from the Participants to Brent J. Fields, Secretary, SEC (January 18, 2017), <https://www.sec.gov/divisions/marketreg/rule613-info-notice-of-plan-processor-selection.pdf>.

⁸⁶ 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>.

Industry Members.”⁸⁷ 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.

6. CAIS Implementation Costs

Commenters have argued against the recovery of costs related to the delays in the implementation of CAIS, including costs incurred with regard to Kingland.⁸⁸ CAT LLC continues to believe that the recovery of CAIS-related costs is appropriate, and that the amount and scope of such costs, as described in the CAT Fee Filings, are reasonable. Again, 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.”⁸⁹ 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.”⁹⁰ In keeping with these provisions, the CAT Fee Filings provide a brief description of reasonably budgeted CAIS operating fees.

In addition, CAT LLC determined that the CAIS operating fees described in the CAT Fee Filings 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 in the CAT Fee Filings, the CAIS operating fees were incurred with regard to two categories of CAIS-related efforts: (1) the acceleration of the reporting of large trader identifiers (“LTID”);⁹¹ and (2) the development of the CAIS Technical Specifications and the building of CAIS.⁹² These two categories of costs are discussed in more detail below.

a. 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

⁸⁷ CAT Funding Model Approval Order at 62650.

⁸⁸ Citadel Letter at 9; SIFMA Letter at 8; FIA Letter at 3; Virtu Letter at 3.

⁸⁹ Section 11.1(a)(i) of the CAT NMS Plan.

⁹⁰ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

⁹¹ *See, e.g.*, FINRA CAT Fee Filing at 10856, 10861, 10865 and 10868.

⁹² *See, e.g.*, FINRA CAT Fee Filing at 10855, 10861, 10865 and 10868.

contemplated during this period at the request of the SEC and in accordance with exemptive relief granted by the SEC.⁹³ As the SEC approved in this exemptive relief, the Participants proposed “to require the reporting of LTID 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.”⁹⁴ 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 2021.⁹⁵
- 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.⁹⁶

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.

⁹³ See Securities Exchange Rel. No. 88702 (Apr. 20, 2020), 85 Fed. Reg. 23075, 23079-80 (Apr. 24, 2020) (“Phased Reporting Exemptive Relief Order”).

⁹⁴ *Id.* at 23078-79, n.70.

⁹⁵ 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>).

⁹⁶ Such contact points with the industry are described in detail on the Events webpage of the CAT website (<https://www.catnmsplan.com/events>).

b. 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, 2021.⁹⁷
- The full, final CAIS Technical Specifications were published on January 29, 2021.
- Updated versions of the CAIS Technical Specifications were published throughout 2021.⁹⁸

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 has been working to address these remaining issues,⁹⁹ 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.

⁹⁷ 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>).

⁹⁸ Six updated versions of the CAIS Technical Specifications were published during 2021, in March, May, June, August, October and December.

⁹⁹ See, e.g., CAT Q4 2023 Quarter Progress Report (<https://www.catnmsplan.com/sites/default/files/2024-01/CAT-Q4-2023-QPR.pdf>).

7. Public Relations Costs

Commenters have argued that none of the \$366,708 in public relations costs should be paid by Industry Members.¹⁰⁰ The commenters argue that the public relations firms were hired to represent the views of the Participants regarding the CAT, not those of Industry Members, and that such costs are not related to the implementation of the CAT.¹⁰¹ CAT LLC continues to believe that the recovery of public relations costs is appropriate and that the amount and scope of such costs, as described in the CAT Fee Filings, 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.¹⁰²

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.”¹⁰³ 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.”¹⁰⁴ In keeping with these provisions, the Participants have provided a brief description of reasonable public relations costs in their CAT Fee Filings.

In addition, CAT LLC determined that the public relations costs described in the CAT Fee Filings 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.

¹⁰⁰ Citadel Letter at 9; SIFMA Letter at 11; FIA Letter at 3; Virtu Letter at 3.

¹⁰¹ *Id.*

¹⁰² CAT NMS Plan Approval Order at 84917-18.

¹⁰³ Section 11.1(a)(i) of the CAT NMS Plan.

¹⁰⁴ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

8. Legal Costs Related to the Limitation of Liability Provision in CAT Reporter Agreements

Commenters also object to the recovery of legal costs related to the limitation of liability provision in the CAT Reporter Agreements.¹⁰⁵ CAT LLC continues to believe 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 in the CAT Fee Filings 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.¹⁰⁶ 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.¹⁰⁷ 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.¹⁰⁸ In

¹⁰⁵ Citadel Letter at 8; SIFMA Letter at 7-8; FIA Letter at 3; Virtu Letter at 3.

¹⁰⁶ See Sections 11.1(a)(i) and 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

¹⁰⁷ See, e.g., NASDAQ Equities Rule 4626.

¹⁰⁸ 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).

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.¹⁰⁹

Furthermore, as described in the CAT Fee Filings, 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.

9. Costs for the Chair of CAT Operating Committee

A question also was raised regarding the inclusion of consulting costs related to the Chair of the Operating Committee. CAT LLC continues to believe that the recovery of consulting costs related to the Chair 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.¹¹⁰ 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"¹¹¹ costs. In keeping with these provisions, the Participants have provided a brief description of reasonable consulting costs in their CAT Fee Filings, 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.

¹⁰⁹ See Letter from Michael Simon, Chair, CAT Operating Committee, to Vanessa Countryman, Secretary, Commission (Dec. 18, 2020).

¹¹⁰ Section 11.1(a)(i) of the CAT NMS Plan.

¹¹¹ Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

C. CAT LLC Has Satisfied the Relevant Financial Accountability Milestones for Historical CAT Assessment 1

Contrary to the assertions of certain commenters,¹¹² CAT LLC has satisfied the Financial Accountability Milestones (“FAMs”) for Periods 1 through 3.¹¹³ None of the arguments presented by commenters, including those 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.

1. NIA Electronic RFQ Responses

First, certain commenters argue that FAMs 1 through 3 have not been satisfied because CAT LLC has requested exemptive relief relating to the reporting of electronic responses for quotes (“RFQs”) that are not immediately actionable (“NIA Electronic RFQ Responses”).¹¹⁴ 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.”¹¹⁵ Commenters now argue that, because CAT LLC sought this relief at the behest of Industry Members in case the Commission ultimately determines that such responses are considered orders, it means that FAM Periods 1 through 3 have not been satisfied because these messages are not currently being reported by Industry Members. CAT LLC does not agree with this assertion as FAMs 1 through 3 have been satisfied.

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

¹¹² Citadel Letter at 4-7; SIFMA Letter at 14-15.

¹¹³ 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. Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 Fed. Reg. 31322 (May 22, 2020).

¹¹⁴ Citadel Letter at 4; SIFMA Letter at 15. *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024); Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (May 23, 2023).

¹¹⁵ *See* Letter from Brandon Becker, Chair, CAT NMS Plan Operating Committee to Vanessa Countryman, Secretary, Commission (Feb. 13, 2024) at 2.

orders under Rule 613(j)(8).¹¹⁶ 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.¹¹⁷

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).¹¹⁸ 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 “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 the Financial Accountability Milestones, provided that any conditions of the exemption are satisfied.”¹¹⁹

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.”¹²⁰ The Participants further warned that “Industry Members may request or require unanticipated reporting delays to address Industry Member implementation issues or

¹¹⁶ See, e.g., Letter from Howard Meyerson, Managing Director, FIF, to Sai Rao, Counsel for Trading and Markets, Office of the Chair (April 25, 2024) (“FIF NIA Electronic RFQ Response Letter”).

¹¹⁷ *Id.*

¹¹⁸ Securities Exchange Act Rel. No. 100181 (May 20, 2024), 89 Fed. Reg. 45715 (May 23, 2024).

¹¹⁹ *Id.* at n.11.

¹²⁰ See Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission at 9 (Oct. 28, 2019).

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.”¹²¹ 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. Notably, commenters do not argue against the Commission granting the requested relief. It would be a perverse result for CAT LLC to be penalized financially for seeking in good faith to resolve a difficult interpretive issue for the benefit of Industry Members. The Commission should not allow Industry Members to wield exemptive requests as both a sword and a shield.

2. 2023 Verbal Quotes Exemption

Second, one commenter cites 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”).¹²² This commenter theorizes that because this exemption requires CAT LLC to provide a detailed status update to the Commission by July 31, 2025, and because the exemption still requires full compliance by July 31, 2026, it is impossible to determine compliance with the FAMs for the relevant periods.

This commenter’s argument reflects an apparent misunderstanding of the relevant Commission orders and dates. 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”).¹²³ 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.”¹²⁴ Here, the 2020 Verbal Quotes Order was in effect and the conditions of the exemption was satisfied as of December 31,

¹²¹ *Id.* at 10.

¹²² Citadel Letter at 5. *See* Securities Exchange Act Rel. No. 98023 (July 28, 2023), 88 Fed. Reg. 51369 (Aug. 3, 2023) (the “2023 Verbal Quotes Exemption”).

¹²³ Securities Exchange Act Rel. No. 90405, 85 Fed. Reg. 73544 (Nov. 18, 2020) (the “2020 Verbal Quotes Exemption”).

¹²⁴ *See, e.g.*, Securities Exchange Act Rel. No. 89051 (June 11, 2020), 85 Fed. Reg. 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. Under Citadel’s reading, any temporary or conditional exemption would produce the irrational result of extending the relevant FAM Period potentially indefinitely into the future, which would render such relief meaningless for purposes of determining compliance with the FAMs.

2021, and therefore may be relied upon for purposes of determining compliance with FAM Periods 1 through 3.¹²⁵

3. November 2023 Order

Third, one commenter cites the Commission's November 2, 2023 order granting relief from certain CAT NMS Plan requirements (the "November 2023 Order").¹²⁶ Again, this commenter's argument stems from a misunderstanding over the relevant Commission orders and dates.¹²⁷ 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."¹²⁸

Separately, this commenter argues that the November 2023 Order was "the product of an unprecedented effort by the Commission to resolve litigation with the Participants so that they could intervene in petitioners' recently filed Eleventh Circuit suit and present a united front in defending the Funding Order."¹²⁹ This commenter cites no evidence for this allegation, which has no basis in reality.

Finally, this commenter's assertion that the November 2023 Exemption Order "contradicts Commission rulemaking establishing the FAMs," is inconsistent with the FAM adopting release, in which the Commission repeatedly emphasized its "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability

¹²⁵ 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).

¹²⁶ Citadel Letter at 5-7. *See* Securities Exchange Act Rel. No. 98848 (Nov. 2, 2023), 88 Fed. Reg. 77128 (Nov. 8, 2023).

¹²⁷ Citadel separately cites the Commission's July 8, 2022 order, which also postdates FAM Periods 1 through 3. *See* Citadel Letter at 5.

¹²⁸ *Id.* at 77129 n.12.

¹²⁹ Citadel Letter at 7.

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

4. Executing Broker Reporting

Fourth, this commenter argues that Participant exchanges are reporting the Executing Broker to CAT differently in certain situations, and inaccurately speculates that, given these differences in reporting, it is unclear how these transactions are being linked in CAT as required by FAM 2, which requires sufficient linkage “to permit the Participants and the Commission to analyze the full lifecycle of an order across the national market system.”¹³² These reporting differences are irrelevant for linkage purposes as the fields used for CAT Executing Broker are not used for linkage. As described in the CAT Fee Filings, CAT LLC completed the requirements of FAM Period 2, including the required linkage, by December 31, 2020.

D. CAT LLC Has Provided Significant Information and Assistance to Industry Members to Allow for an Orderly Implementation of CAT Fees

1. The CAT Billing Approach Allows CAT Reporters to Reconcile CAT Invoices to Underlying Trades Provided by CAT

Commenters have raised certain concerns about the ability of Industry Members to perform various types of “reconciliations” with regard to their CAT invoices. There are three types of reconciliation processes related to the invoices that are raised throughout the comments:

- 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

¹³⁰ Securities Exchange Act Rel. No. 88890 (May 15, 2020), 85 Fed. Reg. 31322, 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 CAT NMS Plan, Section 12.3 (“[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 SIFMA Letter at 14-15.

- **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, as noted in the CAT fee filings. 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.¹³³ 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.

a. The CAT Billing Approach Allows CAT Reporters to Reconcile the CAT Invoice Amount to the Underlying Trades Provided by CAT

The CAT billing approach is designed to allow CAT Reporters to reconcile their CAT invoice amounts to the underlying trades on which the CAT fees are calculated.¹³⁴ Specifically, CAT LLC will deliver CAT billing trade details files for each underlying trade concurrently and

¹³³ In addition to billing questions discussed below, FIF also states in its comment letter that "The executionTimestamp and tradeReportTimestamp fields in the CAT Billing Trade Details file for off-exchange transactions include the date but not the time. Both fields also should provide the time. The CAT Billing Trade Details file for on-exchange transactions includes the date and the time in the eventTimestamp field." FIF Letter at 19. FCAT has analyzed this issue and determined that FCAT is providing both the timestamp and the date. FIF also states in its comment letter that "The complexity of the TRF trade condition values adds unnecessary complexity to CAT billing." FIF Letter at 15. The trade condition values cited by FIF represent the full set of possible values used for the TRFs, but FCAT recognizes that many of these values are not relevant to CAT billing. Accordingly, FCAT proposes to remove these from the specifications to prevent confusion.

¹³⁴ FCAT performs quality assurance tests to ensure that the calculation of the CAT fee correctly reflects the underlying trades.

in conjunction with each invoice generated for CAT fees.¹³⁵ The elements of CAT billing trade details are set forth in detail in the CAT Technical Specifications for Billing Trade Details.¹³⁶ These technical specifications set forth in detail the specific elements of the CAT billing trade details, both for on-exchange and off-exchange transactions. With the CAT billing trade details for the underlying trades for the CAT invoices, CAT Reporters can confirm the CAT fees set forth in their CAT invoices.

b. Although Beyond the Requirements of the CAT NMS Plan, the CAT Billing Approach Generally Allows CAT Reporters to Match the Underlying Trades Provided by CAT with CAT Invoices to Firms' Internal Books and Records Independent of CAT

Commenters have raised questions about the ability of Industry Members to match their underlying trades provided by CAT LLC to their internal books and records and other SRO data, both of which are independent of CAT data.¹³⁷ 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, as urged by commenters.¹³⁸ Specifically, FCAT is providing various key elements of the

¹³⁵ CAT Technical Specifications for Billing Trade Details, Version 1.0 r1 (Dec. 8. 2023) (https://www.catnmsplan.com/sites/default/files/2023-12/12.07.2023-CAT-Technical-Specifications-for-Billing-Trade-Details-v1.0r1_CLEAN.pdf).

¹³⁶ *Id.* at 11-16.

¹³⁷ *See* SIFMA Letter at 4; and *see generally* FIF Letter.

¹³⁸ FIF Letter at 16-17.

trade itself, such as the tradeID and branch sequence,¹³⁹ 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.¹⁴⁰ FIF has recognized the value of such an approach when it stated that “FIF members request that FINRA provide this same type of data when invoicing the Regulatory Transaction Fee.”¹⁴¹

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 31.¹⁴² By providing Additional Trade Details that are not available in other fee contexts, FCAT is addressing commenters’ requests with regard to their 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.

CAT LLC believes that certain requests by commenters implicate CAT Reporters’ ability to match the underlying trades provided by CAT with CAT invoices to other books and records independent of CAT. For example, certain technical questions raised by FIF fall in this category, including questions regarding the mapping of TRF and ORF fields to CAT billing fields, trade execution identifier and routedOrder ID, exchanges’ rerouting an order, give-up brokers identified by options exchanges, quoteID for options, IMID, side branch sequence identifier, rounding and control number values.¹⁴³ CAT LLC does not believe that it is required to resolve these requests, and, in some cases, does not believe it is possible to address these requests with certainty due to factors out of CAT LLC or FCAT’s control. Nevertheless, CAT LLC and FCAT have carefully researched and analyzed each of these firm-specific requests, and have been working voluntarily to assist CAT Reporters with these requests when possible. As noted, FCAT is providing Additional Trade Details that will assist CAT Reporters in their efforts to match their

¹³⁹ 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>).

¹⁴⁰ See, e.g., FIF Letter at 16.

¹⁴¹ Section 31 Fee Reconciliation Process, FIF Member Presentation to FINRA on Enhancing the Reconciliation Process for the FINRA Regulatory Transaction Fee (for Recoupment of Section 31 Fees) (<https://fif.com/index.php/working-groups/category/271-comment-letters?download=2803:fif-presentation-to-finra-on-enhancing-the-reconciliation-process-for-section-31-related-fees&start=10&view=category>) at 8 (requesting that FINRA provide the same type of data as the CAT a when invoicing the Regulatory Transaction Fee).

¹⁴² 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 Fed. Reg. 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).

¹⁴³ FIF Letter at 17-19.

underlying trades to their own books and records, and has been providing CAT Reporters with assistance with regard to their detailed billing questions. 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.

c. CAT LLC is Not Required to Facilitate CAT Reporters' Ability to Pass Through Fees to Their Customers

Commenters have asked that CAT LLC assist Industry Members with identifying the order originator for the underlying trades provided by CAT LLC, which will facilitate firms' ability to pass through CAT Fees to their customers.¹⁴⁴ 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, the comments regarding whether and how such fees are passed on to other broker-dealers or clients is outside the scope of the CAT Fee Filings.¹⁴⁵ 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.

i. Originating Brokers Versus Executing Brokers

Commenters have suggested that CAT LLC should charge originating brokers, rather than executing brokers, to avoid the need for the reconciliation process.¹⁴⁶ First, as a preliminary matter, as discussed above, the Commission approved the charging of the CAT Executing Broker, rather than the originating broker, as part of the CAT Funding Model, and the Participants are required to act in accordance with the CAT Funding Model in their CAT Fee Filings.

Second, 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

¹⁴⁴ See SIFMA Letter at 4; and *see generally* FIF Letter.

¹⁴⁵ SIFMA Letter at 4-6.

¹⁴⁶ FIF Letter at 4-5.

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.

ii. 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.¹⁴⁷ 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. CAT LLC believes that certain technical issues raised by commenters implicate CAT Reporters' ability to identify the order originator for underlying trades for the CAT invoices, including issues related to non-media reports, ATS transactions, dealer transactions, and onward routing by the receiving firm, use of the routedOrderID, and transactions executed on an ATS (or otherwise as an agency cross).¹⁴⁸ Although CAT LLC does not believe that it is required to address these issues, CAT LLC and FCAT have carefully researched and analyzed each of these comments, 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.

2. CAT LLC Has Provided and Continues to Provide Significant Technical Assistance to Industry Members with Implementation of Historical CAT Assessment 1

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.

¹⁴⁷ "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>).

¹⁴⁸ FIF Letter at 6-12, 14 and 17.

- 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;¹⁴⁹ (2) trade details schemas;¹⁵⁰ and (3) CAT billing scenarios.¹⁵¹
- 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.¹⁵² 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.¹⁵³ 485 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.¹⁵⁴
- 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 26 FAQs are available on the CAT website, and CAT LLC will provide additional responses to FAQs as warranted.¹⁵⁵
- 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

¹⁴⁹ 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).

¹⁵⁰ Trade Details Schema (<https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>).

¹⁵¹ 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>).

¹⁵² CAT Billing Webinar, Part 1 (Sept. 28, 2023) (<https://www.catnmsplan.com/events/part-1-cat-billing-webinar>).

¹⁵³ CAT Billing Webinar, Part 2 (Nov. 7, 2023) (<https://www.catnmsplan.com/events/part-2-cat-billing-webinar>).

¹⁵⁴ 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>).

¹⁵⁵ 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).

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. 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. In the CAT Fee Filings, the Participants indicated that they would provide CAT Executing Brokers with mock invoices based on transaction data from November 2023, December 2023, January 2024 and February 2024.¹⁵⁶ However, given the benefits of providing the mock invoices, CAT LLC voluntarily has determined to continue to provide such mock invoices past February 2024.

- 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.¹⁵⁷ To date, 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. SIFMA's comment letter provides an excellent example of the benefits of the FCAT's extensive billing education efforts. In its comment letter, SIFMA states that "[s]uch firms have noted high mismatch rates between their data and the FINRA CAT data, with one firm indicating that the mismatch rate in January 2024 was approximately 40%, meaning that the firm is only seeing an approximately 60% match rate between the trades on which it expected CAT fees and the trades that are being assessed CAT fee in the FINRA CAT December 2023 sample invoices."¹⁵⁸ Although SIFMA does not identify the Industry Member in question, CAT LLC believes FCAT is aware of the identity of this Industry Member. Assuming that CAT LLC has correctly identified the Industry Member and the issues noted, CAT LLC believes that SIFMA's letter provides outdated statistics regarding this firm's reconciliation efforts. CAT LLC understands that FCAT worked closely with this Industry Member, and learned that the Industry Member was attempting to reconcile the trades solely through the use of the trade ID. After educating the Industry Member about the other means provided to reconcile the trade, we understand that the reconciliation issues that the firm was

¹⁵⁶ See, e.g., FINRA CAT Fee Filing at 10875.

¹⁵⁷ 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.

¹⁵⁸ SIFMA Letter at 5.

experiencing were resolved. After reviewing outstanding billing questions and how they were addressed, FCAT is not aware of any open billing cases that meet this description.

3. CAT LLC Has Provided Industry Members with Ample Time to Implement Historical CAT Assessment 1

Contrary to the assertions of certain commenters,¹⁵⁹ 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. The filing proposes issuing the first invoices for Historical CAT Assessment 1 in April 2024 based on transactions in Eligible Securities in March 2024. Moreover, as discussed further below, the timeline for implementing Historical CAT Assessment 1 has been pushed back even further in light of the Commission's order instituting proceedings regarding the CAT Fee Filings. It is disingenuous for the industry to now complain that CAT LLC has not listened to the timing concerns and that even more time is necessary to implement the fees. 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, as discussed above.

E. CAT LLC Urges the Commission to Allow the CAT Fee Filings to Take Effect Without Further Delay Despite the Funding Model Litigation

From the inception of Rule 613 in 2012 and initial approval of the CAT NMS Plan in 2016, it has always been contemplated that the costs of the CAT would be borne by the Participants and the Industry Members. The Commission most recently re-affirmed this when it approved the CAT Funding Model. However, to date, the significant economic costs of building and operating the CAT—more than \$775 million through the end of 2023 and growing—have been borne entirely by the Participants. The continued funding of the CAT solely by the Participants was and is not contemplated by the CAT NMS Plan or Rule 613, nor is it a financially sustainable approach. Over the past seven years, CAT LLC has gone through an extensive process of evaluating and seeking comment on various funding models. The CAT Funding Model was approved by the Commission as satisfying the Exchange Act after a public comment period of effectively more than 400 days. The record is robust and the commencement of the implementation of the CAT Funding Model through the Historical CAT Assessment is clearly appropriate at this stage. The SEC should approve the Historical CAT Assessment without further delay.

Certain commenters have argued that no CAT fees should be collected from Industry Members until after the litigation in the Eleventh Circuit (any related litigation) (“Funding

¹⁵⁹ FIF Letter at 19.

Model Litigation”) has been finally resolved.¹⁶⁰ The Participants disagree with this transparent delay tactic and urge the Commission to approve Historical CAT Assessment 1 expeditiously.

First, the SEC is required to approve or allow to go into effect a fee filing if it complies with the requirements of the Exchange Act and the CAT NMS Plan. The standards by which the SEC is required to judge a fee filing do not include whether a commenter has brought a lawsuit challenging the fee as unconstitutional or otherwise invalid. In this case, the SEC has already approved the CAT Funding Model after determining that it met the requirements of the Exchange Act.

Second, disapproving a fee filing because a commenter has filed a legal challenge concerning the CAT Funding Model presupposes the result of the litigation without the benefit of the judicial process, and does so in a way that runs counter to the Commission’s own approval order of the CAT Funding Model.

Third, the commenters argue that no fees should be collected from Industry Members until after the Funding Model litigation has been resolved because the fees paid for the CAT by Industry Members may not be repaid.¹⁶¹ Such an argument ignores the equities of the situation. The Participants have funded 100% of the costs of the CAT to date through non-interest-bearing notes. If the Funding Model Litigation were successful and the CAT and/or the CAT Funding Model could no longer be enforced, then both the Participants and Industry Members would be in a similar position as Industry Members, that is, providing funding for a project that is no longer viable. Although, the Participants would have expended far more in funds on the CAT than Industry Members and carried the full costs of doing so for a far longer time. The Participants question why they should shoulder all the financial risk for any such determination when Rule 613 and the CAT NMS Plan clearly contemplate both Participants and Industry Members contributing to the cost of the CAT. An equitable result would be for Industry Members to finally begin paying their portion of CAT costs, and for Participants and Industry Members to share the risk if such a ruling were to come to pass.

F. Updated Effective Date of Historical CAT Assessment 1

The CAT Fee Filings proposed to send CAT Executing Brokers the first invoice for Historical CAT Assessment 1 in April 2024 based on transactions in March 2024. Given that the March and April 2024 dates have now passed, the Participants plan to revise their CAT Fee Filings to adopt an effective date based on the date of any SEC approval of Historical CAT Assessment 1. Specifically, the Participants plan to revise the effective date for Historical CAT Assessment 1 to read as follows:

Each CAT Executing Broker shall receive its first invoice for Historical CAT Assessment 1 in the second full month after approval of Historical CAT Assessment

¹⁶⁰ Citadel Letter at 2; FIA Letter at 2; SIFMA Letter at 3; Virtu Letter at 9.

¹⁶¹ Virtu Letter at 8.

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1 by the SEC, which shall set forth the Historical CAT Assessment 1 fees calculated based on transactions in the first full month after approval of Historical CAT Assessment 1 by the SEC, and shall receive an invoice for Historical CAT Assessment 1 for each month thereafter in which Historical CAT Assessment 1 is in effect.

* * * * *

Thank you very much for your attention to this matter.

Respectfully submitted,

/s/ Brandon Becker

Brandon Becker
CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner
Mr. Hugh Beck, Senior Advisor for Regulatory Reporting
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Mr. David Hsu, Assistant Director, Division of Trading and Markets
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