

VIA EMAIL (rule-comments@sec.gov)

May 5, 2021

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

Re: File Number 4-698

Dear Ms. Countryman:

On March 31, 2021, the Operating Committee, on behalf of the Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail² (the “CAT NMS Plan” or “Plan”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed amendment to the CAT NMS Plan. The SEC published the proposed amendment for comment on April 14, 2021 (“Proposing Release”).³ In the Proposing Release, the Operating Committee proposes to amend the CAT NMS Plan to implement a revised funding model (“Proposed Funding Model”) for the consolidated audit trail (“CAT”) and to establish a fee schedule for Participant CAT fees in accordance with the Proposed Funding Model.⁴ As a part of the proposed amendment, the Operating Committee provided an example of how the Proposed Funding Model would operate for illustrative purposes only.⁵ In response to the filing, various Industry Members have requested additional details regarding the illustrative example.⁶ Accordingly, this comment letter provides additional details regarding the illustrative example.

As set forth in the Proposing Release, an example of how the Proposed Funding Model would operate was provided for illustrative purposes only. Specifically, Exhibit B to the Proposing Release set forth an example of illustrative CAT fees for each Equities Participant,

¹ The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., 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 CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act and the rules and regulations thereunder. See Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 Fed. Reg. 84696 (Nov. 23, 2016) (“CAT NMS Plan Approval Order”). The full text of the CAT NMS Plan is available at www.catnmsplan.com.

³ Securities Exchange Act Rel. No. 91555 (Apr. 14, 2021), 86 Fed. Reg. 21050 (Apr. 21, 2021) (“Proposing Release”). The Proposing Release was filed, and this comment letter is being submitted, in accordance with the requirements of the CAT NMS Plan for such action. See, e.g., Proposing Release at 21072.

⁴ Unless otherwise defined herein, capitalized terms are defined as set forth in the CAT NMS Plan.

⁵ Proposing Release at 21068, 21074-21080.

⁶ See, e.g., Letter from Howard Meyerson, Managing Direct, Financial Information Forum, to Vanessa Countryman, Secretary, SEC re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail, File No. 4-698 (Apr. 29, 2021) (“FIF Letter”).

Options Participant and Industry Member CAT Reporter calculated under the Proposed Funding Model based on budgeted Total CAT Costs for 2021 as well as message traffic and market share data for the fourth quarter of 2020. The Proposing Release emphasized that Exhibit B only provides an illustrative example of how the Proposed Funding Model would operate; the calculation of actual fees will differ from this example in various ways. For example, the Participants have paid or will have paid 100% of these costs up to the time of the SEC approval of the Proposed Funding Model. As a result of having already paid these costs in advance of an SEC approval, Participants would not be obligated to pay CAT fees related to 2021 CAT costs to the extent the Participants have already paid such costs. Furthermore, Period 3 CAT Fees for Industry Members will be calculated based on actual Total CAT Costs for 2021, not budgeted CAT Costs for 2021, and based on CAT Data from 2022, not from 2020.

In response to publication of the Proposing Release, certain Industry Members have inquired which anonymized Industry Members in the “Quarterly Industry Member CAT Fees” chart in Exhibit B represents their message traffic for the fourth quarter of 2020. The Operating Committee recognizes that an Industry Member’s knowledge of its own fees in the illustrative example would be helpful in analyzing the Proposed Funding Model. Accordingly, if an Industry Member is interested in learning which anonymized Industry Member in the illustrative example represents its message traffic, the Industry Member may contact the FINRA CAT Helpdesk by email at help@finracat.com. Subject to verification of the identity of the requesting party as an authorized representative of the relevant Industry Member, the Helpdesk will provide the authorized representative of the Industry Member with the number of the applicable anonymized Industry Member in Exhibit B. In addition, upon request, the Helpdesk also can provide the Industry Member’s total message traffic count and the number or percentage of the Industry Member’s reported events that were treated as Options Market Maker or Equities Market Maker events.

In addition, certain Industry Members have made inquiries regarding variables used in the fee calculations for Industry Members in the illustrative example, including variables related to total message traffic count, market maker message traffic, and the CAT budget. Accordingly, the following provides additional data related to the calculation of the “Quarterly Industry Member CAT Fees” set forth in Exhibit B of the Proposing Release.⁷

(1) Commenters have requested the Listed Options trade-to-quote ratio and the NMS Stock trade-to quote ratio used in the illustrative example in Exhibit B.⁸ Rounded versions of the trade-to-quote ratios for the fourth quarter of 2020 were included in the Proposing Release: 4.77% for the trade-to-quote ratio for NMS Stocks and 0.01% for the trade-to-quote ratio for Listed Options. Without rounding, the trade-to-quote ratio for NMS Stocks for the fourth quarter of 2020 was 4.771509403581%, and

⁷ On a going forward basis, the Operating Committee plans to provide similar information regarding the variables necessary for an Industry Member to calculate its actual CAT fees.

⁸ See FIF Letter at 2.

the trade-to-quote ratio for Listed Options for the fourth quarter of 2020 was 0.00941210835076729%.⁹

(2) Commenters have also requested the annual operating budget for 2021.¹⁰ The budgeted Total CAT Cost for 2021 was provided in the illustrative example in Exhibit B of the Proposing Release. The budgeted Total CAT Costs for 2021 are \$132,522,082.¹¹

(3) Commenters have also requested the total Industry Member message traffic count, as well as the total message counts for Options Market Makers and Equity Market Makers used in the illustrative example in Exhibit B. The following table provides these message traffic counts:

Total Industry Member Quarterly Message Counts:

	Message Count	Trade-to-Quote Ratio	Message Count (with Market Maker Discounts)
Total Equities Non-Market Maker Industry Member Messages	662,875,905,973	N/A	662,875,905,973
Total Options Non-Market Maker Industry Member Messages	30,938,353,392	N/A	30,938,353,392
Total Equity Market Maker Industry Member Messages	258,630,443,272	4.771509403581%	12,340,575,921.25
Total Options Market Maker Industry Member Messages	7,972,355,507,469	0.00941210835076729%	750,366,738.47
Total Industry Member Messages	8,924,800,210,106	N/A	706,905,202,024.72

Furthermore, the following describes the method used in calculating an Industry Member's quarterly CAT fee listed in the chart entitled "Quarterly Industry Member CAT Fees" in Exhibit B of the Proposing Release:¹²

Step 1 - Unadjusted CAT Fee:

- The Unadjusted CAT Fee for each Industry Member is calculated by multiplying the Industry Member Allocation by the Original Message Traffic Percentage for the applicable Industry Member.
- The Industry Member Allocation is 75% of Total CAT Costs, which is \$24,847,890.38 for the quarter.¹³

⁹ Proposing Release at 21058.

¹⁰ See FIF Letter at 1.

¹¹ As noted in the Proposing Release, the Period 3 CAT Fee for Industry Members would be calculated at the end of 2021 based on actual costs for 2021, rather than the budgeted costs used in the illustrative example. The Operating Committee will announce via a CAT alert after the end of 2021 the Total CAT Costs for 2021 to be used in calculating the quarterly Period 3 CAT Fees. Proposing Release at 21065-21066.

¹² Note that there may be small differences between the fees calculated via this process and those in Exhibit B due to rounding.

- The Original Message Traffic Percentage for each Industry Member is set forth in Exhibit B in the “% of total message traffic” column. The Original Message Traffic Percentage reflects the market maker discounts, if any, applicable to each Industry Member.

Step 2 - Minimum Adjusted CAT Fee:

- All Industry Members that would pay less than \$125 based on the calculation in Step 1 would be subject to the Minimum Industry Member CAT Fee of \$125. In the illustrative example, the Industry Members subject to the Minimum Industry Member CAT Fee of \$125 would be Industry Member Nos. 182 – 1237.
- For Industry Member Nos. 1 - 181, the Minimum Adjusted CAT Fee would be calculated by first subtracting the amount paid by the Industry Members subject to the Minimum Industry Member CAT Fee (\$132,000) from the Industry Member Allocation (\$24,847,890.38); this difference is \$24,715,890.38. This amount is then multiplied against the Adjusted Message Traffic Percentages for each of Industry Member Nos. 1 – 181.
- The Adjusted Message Traffic Percentage for each Industry Member Nos. 1 - 181 is the Industry Member’s total message traffic divided by the sum of the total message traffic for Industry Member Nos. 1 – 181.
 - o An Industry Member’s total message traffic can be calculated by multiplying the Original Message Traffic Percentage set forth in Exhibit B by the total number of Industry Member messages, which is 706,905,202,024.72.
 - o The total message traffic for Industry Member Nos. 1 – 181 is 706,766,385,155.72, as the total message traffic of the Industry Members subject to the Minimum Industry Member CAT Fee is 138,816,869.

Step 3 – Maximum Industry Member CAT Fee:

- Each Industry Member with an Original Message Traffic Percentage higher than 8% would pay the Maximum Industry Member CAT Fee of 8% of the Industry Member Allocation – that is, \$1,987,831.23. In the illustrative

¹³ Note that the introductory language to the chart entitled “Quarterly Industry Member CAT Fees” in Exhibit B of the Proposing Release states that the Industry Member Allocation is \$24,847,876.90. However, the correct Industry Member Allocation of \$24,847,890.38 was used in the calculation of the Industry Member CAT fees in the illustrative example.

example, Industry Members Nos. 1 - 5 would be subject to the Maximum Industry Member CAT Fee.

- The difference between the aggregate Minimum Adjusted CAT Fee for the five Industry Members subject to the Maximum Industry Member CAT Fee and the aggregate Maximum Industry Member CAT Fees to be paid by those five Industry Members (which is \$3,264,211.87) is then reallocated to all Industry Members, including those subject to the Maximum Industry Member CAT Fee and those subject to the Minimum Industry Member CAT Fee, based on their Original Message Traffic Percentages. Specifically, the product of the Original Message Traffic Percentage for each Industry Member multiplied by the \$3,264,211.87 would be added to (1) the Maximum Industry Member CAT Fee for those Industry Members subject to the Maximum Industry Member CAT fee; (2) the Minimum Industry Member CAT Fee for those Industry Members subject to the Minimum Industry Member CAT Fee; and (3) Minimum Adjusted CAT Fee for all Industry Members other than those subject to the Maximum Industry Member CAT Fee or the Minimum Industry Member CAT Fee.

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Respectfully submitted,



Michael Simon

CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair
The Hon. Allison Herren Lee, Commissioner
The Hon. Elad L. Roisman, Commissioner
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
Mr. Hugh Beck, Senior Advisor for Regulatory Reporting
Mr. Christian Sabella, Acting Director, Division of Trading and Markets
Mr. David S. Shillman, Associate Director, Division of Trading and Markets
Mr. David Hsu, Assistant Director, Division of Trading and Markets
Mr. Mark Donohue, Senior Policy Advisor, Division of Trading and Markets
Ms. Erika Berg, Special Counsel, Division of Trading and Markets
CAT NMS Plan Participants