

Required fields are shown with yellow backgrounds and asterisks.

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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2024 - \* 003

Amendment No. (req. for Amendments \*)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposed Rule Change to Adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) to Implement a Historical Consolidated Audit Trail Recovery Assessment

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Faisal Last Name \* Sheikh

Title \* Assistant General Counsel

E-mail \* faisal.sheikh@finra.org

Telephone \* (202) 728-8379 Fax

### Signature

Pursuant to the requirements of the Securities Exchange of 1934, Financial Industry Regulatory Authority has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 01/02/2024

(Title \*)

By Thomas Scully

Vice President and Associate General Counsel

(Name \*)

Thomas Scully  
Digitally signed by Thomas Scully  
Date: 2024.01.02 14:37:31 -05'00'

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

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FINRA-2024-003 19b-4.docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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FINRA-2024-003 Exhibit 1.docx

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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FINRA-2024-003 Exhibit 5.docx

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),<sup>1</sup> the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) to implement a historical Consolidated Audit Trail (“CAT”) recovery assessment through which FINRA would recoup its contributions to recoverable historical CAT costs incurred prior to January 1, 2022.<sup>2</sup>

The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The Chief Legal Officer of FINRA (or his officer designee) authorized the filing of the proposed rule change with the SEC pursuant to delegated authority. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Pursuant to Section 11.3(b) of the CAT NMS Plan, FINRA filed a separate proposed rule change to establish fees assessed to Industry Members, payable to Consolidated Audit Trail, LLC, related to recoverable historical CAT costs incurred prior to January 1, 2022. See File No. SR-FINRA-2024-002. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

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

(a) Purpose

Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification, or execution.<sup>3</sup> On November 15, 2016, the Commission approved the CAT NMS Plan (“Plan” or “CAT NMS Plan”).<sup>4</sup> Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for Consolidated Audit Trail, LLC (“CAT LLC”) to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.<sup>5</sup> The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”) and, on September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.<sup>6</sup>

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<sup>3</sup> See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45721 (August 1, 2012).

<sup>4</sup> See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”).

<sup>5</sup> See Section 11.1(b) of the CAT NMS Plan.

<sup>6</sup> See Securities Exchange Act Release No. 98290 (September 6, 2023), 88 FR 62628 (September 12, 2023) (“CAT Funding Model Approval Order”).

The CAT Funding Model provides a framework for the recovery of the costs to create, develop, and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees);<sup>7</sup> and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs.<sup>8</sup> With respect to Historical CAT Assessment fees, to date, the CAT Operating Committee has established Historical CAT Assessment 1 with regard to historical CAT costs incurred prior to January 1, 2022 (“Historical CAT Costs 1”).<sup>9</sup>

In light of the approval of the CAT Funding Model and the filing of File No. SR-FINRA-2024-002, FINRA is similarly filing the instant proposed rule change to establish a fee to allow FINRA to recoup its contributions to the Participants’ assessed share of Historical CAT Costs 1 (“Historical CAT Cost Recovery Assessment 1”). Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1—amounting to \$4,613,250—in a manner consistent with the Exchange Act and the CAT Funding Model Approval Order. In the Approval Order, the Commission acknowledged that “the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under

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<sup>7</sup> See Section 11.3(b) of the CAT NMS Plan.

<sup>8</sup> See Section 11.3(a) of the CAT NMS Plan.

<sup>9</sup> See File No. SR-FINRA-2024-002.

the Exchange Act.”<sup>10</sup> The Commission also noted FINRA’s statement “that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.”<sup>11</sup> Given the approval of the CAT Funding Model and FINRA’s proposed rule change to establish Historical CAT Assessment 1 to effectuate the CAT Funding Model,<sup>12</sup> FINRA is submitting this filing to implement Historical CAT Cost Recovery Assessment 1.<sup>13</sup>

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<sup>10</sup> CAT Funding Model Approval Order, 88 FR 62628, 62636-37.

<sup>11</sup> FINRA has consistently made clear its intention to file a rule change to implement member CAT fees simultaneous with the filing of any proposed rule change to effectuate the CAT Funding Model. See Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, Commission, dated April 11, 2023 (“FINRA April 2023 Letter”) at 7 (“If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model.”); see also Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, Commission, dated June 22, 2022 (“FINRA June 2022 Letter”) at 6 (“[G]iven FINRA’s unique nature, FINRA necessarily must seek recovery in turn for the costs it is allocated.”). FINRA also requested that if the Commission were to approve the CAT Funding Model, that it acknowledge “FINRA’s need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA’s ability to carry out its critical regulatory mission.” See CAT Funding Model Approval Order, 88 FR 62628, 62645.

<sup>12</sup> See File No. SR-FINRA-2024-002.

<sup>13</sup> The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.” See Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan. The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, ... the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.” See Section 11.6(b) of the CAT NMS Plan. As discussed in File No. SR-

FINRA's Portion of Historical CAT Costs 1

As discussed in File No. SR-FINRA-2024-002, which seeks to implement Historical CAT Assessment 1,<sup>14</sup> to date, FINRA and the other Participants have agreed to pay all Past CAT Costs via loans to CAT LLC. Specifically, in the absence of an SEC-approved model establishing how the Participants were to fund the creation, implementation, and maintenance of the CAT, in 2017, FINRA and the other Participants unanimously agreed to apportion all CAT operational costs amongst the group and to fund the CAT through a series of interest-free loans. Through these loans, FINRA contributed \$13,839,748 or roughly 4.1% toward the \$337,688,610 in operating expenses composing Historical CAT Costs 1. Of that approximately \$13.8 million expenditure, FINRA expects to recover \$9,226,499 in loan repayments from CAT LLC following implementation of Historical CAT Assessment 1, and, under the CAT Funding Model,

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FINRA-2024-002, all applicable Financial Accountability Milestones for Historical CAT Assessment 1 and, by extension, Historical CAT Cost Recovery Assessment 1 – that is, Period 1, Period 2, and Period 3 of the Financial Accountability Milestones – have been satisfied. Furthermore, the costs sought to be recovered via both Historical CAT Assessment 1 and Historical CAT Cost Recovery Assessment 1 relate to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

<sup>14</sup> Historical CAT Assessment 1 seeks to recover from CAT Executing Brokers two-thirds of Historical CAT Costs 1—the \$337,688,610 in recoverable costs incurred by CAT LLC prior to January 1, 2022. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 or \$112,562,870.

will forgive the remaining \$4,613,250, which FINRA now seeks to recover through the implementation of Historical CAT Cost Recovery Assessment 1.<sup>15</sup>

The following table illustrates FINRA's approximate contributions to the Plan Participants' collective one-third share of Historical CAT Costs 1 during each of the relevant periods.<sup>16</sup>

<b>Period</b>	<b>Participants' Collective Share of Historical CAT Costs 1</b>	<b>FINRA's Share of Historical CAT Costs 1</b>
<b>Pre-FAM Period (Prior to June 22, 2020)</b>	\$47,973,174	\$1,966,120
<b>FAM Period 1</b>	\$2,125,781	\$87,123
<b>FAM Period 2</b>	\$14,325,493	\$587,113
<b>FAM Period 3</b>	\$48,138,423	\$1,972,894
<b>Total (through January 1, 2022)</b>	<b>\$112,562,870</b>	<b>\$4,613,250</b>

FINRA's recovery of these approximately \$4.6 million in CAT costs is reasonable and consistent with the Exchange Act. As discussed herein and in File No. SR-FINRA-2024-002, these costs incurred by FINRA were necessary to fund the design, implementation, and maintenance of the CAT. The approximately 4.1% of the

<sup>15</sup> FINRA notes that, as is the case with respect to Historical CAT Assessment 1 discussed in File No. SR-FINRA-2024-002, FINRA's recovery under the instant proposed rule change also would not include any portion of Excluded Costs, *i.e.*, \$48,874,937 of costs incurred from November 15, 2017 through November 15, 2018, and \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor. *See* CAT Funding Model Approval Order, 88 FR 62628, 62660 n704.

<sup>16</sup> A detailed description (including the amounts) of all costs incurred by the Participants during the pre-FAM period (prior to June 22, 2020) and during each relevant FAM period, *i.e.*, FAM Period 1, FAM Period 2, and FAM Period 3, is provided in File No. SR-FINRA-2024-002.



Participants' share of Historical CAT Costs borne by FINRA is significantly smaller than the approximately 34% of the Participants' share of Prospective CAT costs to be borne by FINRA under the SEC-approved CAT funding model.<sup>17</sup> As stated by FINRA and permitted under the Exchange Act, FINRA will seek to recover its portion of the Participants' share of CAT costs to ensure that FINRA can fulfill its regulatory mandate and responsibilities.

#### Historical CAT Cost Recovery Assessment 1

FINRA is proposing to adopt Rule 6897(b) (CAT Cost Recovery Fees) to implement Historical CAT Cost Recovery Assessment 1 at this time to allow FINRA to recover its contributions to the Participants' one-third share of Historical CAT Costs.<sup>18</sup> FINRA intends that the fee framework for, and the commencement of payment of, the Historical CAT Cost Recovery Assessment 1 would correspond to the framework put in place under the SEC-approved CAT Funding Model and the timing for the commencement of Historical CAT Assessment 1, as provided for in File No. SR-FINRA-2024-002. Thus, as with Historical CAT Assessment 1, FINRA proposes that each member CAT Executing Broker shall receive its first invoice for Historical CAT Cost Recovery Assessment 1 in April 2024, setting forth fees calculated based on March 2024 transactions in Eligible Securities executed otherwise than on an exchange, as reflected in CAT Data. Consistent with the approach taken under the CAT Funding Model, FINRA

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<sup>17</sup> See FINRA April 2023 Letter, *supra* note 11, at 3 (noting that, under the CAT Funding Model, FINRA "would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 SRO Plan Participants (based on 2021 data).").

<sup>18</sup> In approving the CAT Funding Model, the Commission noted that it "believe[d] that FINRA's allocation of CAT fees likely will be passed through to Industry Members." See CAT Funding Model Approval Order, 88 FR 62628, 62684.

proposes to equally apportion one-third of Historical Fee Rate 1 between the member CAT Executing Broker for the Buyer (“CEBB”) and the member CAT Executing Broker for the Seller (“CEBS”) for each transaction in Eligible Securities executed otherwise than on an exchange.<sup>19</sup> The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for transactions executed otherwise than on an exchange.

TRF/ORF/ADF Transaction Data Event<sup>20</sup>

#	Field Name	Data Type	Description	Include Key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party.	C

As discussed in File No. SR-FINRA-2024-002, the Operating Committee has determined that Historical Fee Rate 1 is \$0.0000439371316687066 per executed equivalent share, and, under the CAT Funding Model, each of the CEBB, CEBS and

<sup>19</sup> As per Section 1.1 of the Plan, for a transaction in an Eligible Security executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, i.e., one of FINRA’s Trade Reporting Facilities (each a “TRF”), OTC Reporting Facility (“ORF”) or Alternative Display Facility (“ADF”), the CEBB and CEBS are the Industry Members identified as the executing broker and the contra-side executing broker in the TRF/ORF/ADF transaction data event in CAT Data. 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, and be required to pay the fee assessed to, both the CEBB and CEBS.

<sup>20</sup> See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

relevant Participant for a given transaction in an Eligible Security would be responsible for one-third of that rate, or \$0.00001464571055623553 per executed equivalent share.<sup>21</sup> In line with this approach, with respect to FINRA's portion of the Participants' one-third share, FINRA is proposing that, for Historical CAT Cost Recovery Assessment 1, the Participants' assessed fee rate would be split evenly between the CEBB and CEBS to establish a Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share<sup>22</sup> for transactions where FINRA is the relevant Participant.<sup>23</sup>

To implement Historical CAT Cost Recovery Assessment 1, FINRA proposes to adopt Rule 6897(b)(1)(A)(i) to provide that each member CAT Executing Broker shall receive its first invoice in April 2024, setting forth the Historical CAT Cost Recovery Assessment 1 fees calculated based on transactions in March 2024, and shall receive similar invoices for each month thereafter in which Historical CAT Cost Recovery

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<sup>21</sup> Dividing \$0.0000439371316687066 by three equals \$0.00001464571055623553.

<sup>22</sup> In approving the CAT Funding Model, the Commission concluded that "the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken by the funding principles of the CAT NMS Plan." See CAT Funding Model Approval Order, 88 FR 62628, 62640. Under the CAT NMS Plan, executed equivalent shares in a transaction in Eligible Securities are reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share. See Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan.

<sup>23</sup> Dividing \$0.00001464571055623553 by two and rounding to six decimal places equals \$0.000007. As with Historical CAT Assessment 1, FINRA determined to use six decimal places for Historical CAT Cost Recovery Fee Rate 1 to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

Assessment 1 is in effect. As provided in proposed Rule 6897(b)(1)(A)(ii), each monthly invoice shall set forth fees for each transaction in an Eligible Security executed by the CAT Executing Broker in its capacity as the CEBB and/or the CEBS (as applicable) otherwise than on an exchange as set forth in CAT Data. The Historical CAT Cost Recovery Assessment 1 fee assessed to each CEBB and CEBS for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share.

Further, as provided in proposed Rule 6897(b)(1)(A)(iii), Historical CAT Cost Recovery Assessment 1 will remain in effect until FINRA's approximately \$4.6 million contribution to the one-third share of Historical CAT Costs 1 assessed to the Plan Participants is collected from member CAT Executing Brokers collectively, which is estimated to be four months, but could be for a longer or shorter period of time.<sup>24</sup>

Proposed Rule 6897(b)(1)(A)(iv) confirms that each member CAT Executing broker shall be required to pay each invoice for Historical CAT Cost Recovery Assessment 1.

Historical CAT Cost Recovery Assessment 1 will be assessed for all transactions in Eligible Securities executed otherwise than on an exchange in each month through the

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<sup>24</sup> From December 1, 2022 through November 30, 2023, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant SRO was approximately 100 billion shares. Assuming similar 2024 trading volumes, FINRA would recover its approximately \$4.6 million portion of the Participants' assessed share of Historical CAT Costs 1 within four months. Given the fee rate and total amount to be recovered, the proposed four-month recovery period is both reasonable and unlikely to significantly overlap with any future CAT assessments under the CAT Funding Model or any future CAT cost recovery assessment passed through by FINRA, which would be the subject of a separate proposed rule change.

end of the month in which FINRA's approximately \$4.6 million contribution to the Participants' one-third share of Historical CAT Costs 1 is assessed, and then FINRA will provide notice that Historical CAT Cost Recovery Assessment 1 is no longer in effect. As with Historical CAT Assessment 1, since Historical CAT Cost Recovery Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Cost Recovery Assessment 1 may result in the collection of more than FINRA's approximately \$4.6 million contribution to Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Cost Recovery Assessment 1 is in effect will be used to offset future member fees assessed by FINRA to recover its contributions, as a Plan Participant, to CAT costs.<sup>25</sup>

FINRA also proposes to adopt Rule 6897(b)(2) to further describe the timing and manner of payment of Historical CAT Cost Recovery Assessment 1. The proposed provision requires member CAT Executing Brokers to pay Historical CAT Cost Recovery Assessment 1 on a monthly basis in the manner prescribed by FINRA. In addition, each CAT Executing Broker would be required to pay the Historical CAT Cost Recovery Assessment 1 within 30 days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).

FINRA also notes that, to assist Industry Members in complying with Historical CAT Assessment 1, each CAT Executing Broker will have access to mock invoices, made available by CAT LLC, with details for any fee liable transactions, including those executed otherwise than on an exchange for the months of November 2023, December

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<sup>25</sup> A similar approach will be taken by CAT LLC with respect to any excess money collected pursuant to Historical CAT Assessment 1 during its final month. See File No. SR-FINRA-2024-002.

2023, January 2024 and February 2024.<sup>26</sup> Since Historical CAT Cost Recovery Assessment 1 will allocate fees to each member CAT Executing Broker based on the same transactions used by CAT LLC to assess the off-exchange portion of Historical CAT Assessment 1 each month, member CAT Executing Brokers may also use the off-exchange transaction data provided by CAT LLC in the mock invoices to prepare for compliance with Historical CAT Cost Recovery Assessment 1. To further assist, beginning with the initial invoice in April 2024, FINRA also intends to make available to each member CAT Executing Broker a separate copy of the relevant details for fee liable transactions executed each month otherwise than on an exchange.

Furthermore, FINRA will also make publicly available on its website: (i) the total amount invoiced each month that Historical CAT Cost Recovery Assessment 1 is in effect, (ii) the total amount invoiced for Historical CAT Cost Recovery Assessment 1 for all months since its commencement, and (iii) the total costs remaining to be collected from members in aggregate for Historical CAT Cost Recovery Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Cost Recovery Assessment 1, members would have sufficient information to reasonably track how much longer Historical CAT Cost Recovery Assessment 1 is likely to be in place.

As noted in Item 2 of this filing, FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

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<sup>26</sup> See File No. SR-FINRA-2024-002.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>27</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and must not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>28</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act, which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.<sup>29</sup> Section 15A(b)(2) of the Act also requires that FINRA be “so organized and [have] the capacity to be able to carry out the purposes” of the Act and “to comply, and . . . to enforce compliance by its members, and persons associated with its members,” with the provisions of the Exchange Act.<sup>30</sup>

FINRA believes that this proposed rule change is consistent with the Act because it is designed to assist FINRA in meeting regulatory obligations pursuant to the Plan. In

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<sup>27</sup> 15 U.S.C. 78o-3(b)(6).

<sup>28</sup> 15 U.S.C. 78o-3(b)(5).

<sup>29</sup> 15 U.S.C. 78o-3(b)(9).

<sup>30</sup> See 15 U.S.C. 78o-3(b)(2).

approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”<sup>31</sup> To the extent that this proposed rule change implements a requirement that facilitates FINRA’s achievement of its regulatory obligations under the Plan and applies specific requirements to FINRA members in this regard, FINRA believes that this proposed rule change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

As discussed in detail in File No. SR-FINRA-2024-002, FINRA believes that the proposed fees paid by the CEBBs and CEBSs in connection with Historical CAT Assessment 1 are reasonable, equitably allocated and not unfairly discriminatory. Historical CAT Cost Recovery Assessment 1 would similarly allow FINRA to recover its costs from member CAT Executing Brokers in a fair and reasonable manner, as contemplated by the Exchange Act and consistent with the CAT Funding Model Approval Order.

Proposed Historical CAT Cost Recovery Assessment 1 would be charged to member CAT Executing Brokers in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission’s view that regulatory fees be used for regulatory purposes. The proposed fees would not cover FINRA services unrelated to the CAT, and any surplus would be used as a reserve to offset future member fees assessed by FINRA to recover its

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<sup>31</sup> CAT NMS Plan Approval Order, 81 FR 84696, 84697.



contributions, as a Plan Participant, to CAT costs. Accordingly, FINRA believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

The reasonableness of Historical CAT Cost Recovery Assessment 1 and its consistency with the Exchange Act likewise is grounded in the facts described above and detailed in File No. SR-FINRA-2024-002. Specifically, the expenses that compose the portion of Past CAT Costs sought to be recovered through Historical CAT Cost Recovery Assessment 1 were recognized by the SEC as appropriate for recovery pursuant to the formula approved in the CAT Funding Model (i.e., technology, legal, consulting, insurance, professional administration, and public relations costs). FINRA has determined that these costs, which are described in detail in File No. SR-FINRA-2024-002, are reasonable and it is appropriate that FINRA recover its Participant contribution to such costs through Historical CAT Cost Recovery Assessment 1. FINRA also has determined that Historical CAT Cost Recovery Assessment 1 provides for the equitable allocation of fees among FINRA members and is not unfairly discriminatory, as discussed herein.

Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1, consistent with the Exchange Act and the CAT Funding Model Approval Order. In approving the CAT Funding Model, the Commission noted FINRA's request that it acknowledge "FINRA's need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA's ability to carry out its critical regulatory mission."<sup>32</sup> The Commission also recognized that "the Exchange Act

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<sup>32</sup> See CAT Funding Model Approval Order, 88 FR 62628, 62645.

expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act.”<sup>33</sup> The Commission further noted FINRA’s statement “that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.”<sup>34</sup> The instant proposed rule change to adopt Historical CAT Cost Recovery Assessment 1 represents such a fee with respect to Historical CAT Costs 1.

Without a mechanism to recover its CAT costs, FINRA, a not-for-profit, national securities association, would not be able to effectively sustain its regulatory mission. Thus, consistent with the cost allocation framework put in place by the SEC-approved CAT Funding Model, whereby CEBBs and CEBSs share equal responsibility for the costs assessed directly to Industry Members based on their transactions in Eligible Securities, FINRA is seeking to recoup these historical CAT costs in a like manner that is fair, reasonable, and equitably allocated among FINRA’s member firms in their capacity as CAT Executing Brokers.

Historical CAT Cost Recovery Assessment 1 will also allow FINRA to align its operating expenses with its operating revenues, target break-even cash flows, and continue to responsibly manage expenses driven by mandatory initiatives, like the CAT NMS Plan, in a manner consistent with FINRA’s public Financial Guiding Principles.<sup>35</sup> FINRA periodically increases its regulatory fees to cover increased costs and scope of

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<sup>33</sup> See supra note 32 at 62636-37.

<sup>34</sup> See supra note 32.

<sup>35</sup> See FINRA’s Financial Guiding Principles, [https://www.finra.org/sites/default/files/finra\\_financial\\_guiding\\_principles\\_0.pdf](https://www.finra.org/sites/default/files/finra_financial_guiding_principles_0.pdf).

address of its member regulatory program; however, those fee increases are not designed to recover the separate costs associated with the development, maintenance, and operation of the CAT system under the CAT NMS Plan.<sup>36</sup>

FINRA's approach in determining Historical CAT Cost Recovery Fee Rate 1, which is consistent with the approach provided for under the SEC-approved Funding Model, is also reasonable and consistent with the Exchange Act. Specifically, similar to the CAT cost assessment methodology approved by the Commission, FINRA proposes to allocate equally among member CEBBs and CEBSs the portion of Participants' one-third share of Historical CAT Costs 1 previously paid by FINRA.<sup>37</sup> FINRA proposes to determine Historical CAT Cost Recovery Fee Rate 1 by multiplying the portion of Historical Fee Rate 1 assessed to the Participants under the CAT Funding Model, *i.e.*, \$0.00001464571055623553 per executed equivalent share, by one-half such that member

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<sup>36</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592, 66602-03 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032). As FINRA explained:

“In addition to costs associated with its CAT reporting compliance program, FINRA must account for significant costs to integrate CAT data into its regulatory systems...Importantly, these costs are separate from and in addition to FINRA's obligation to contribute funding for the development, maintenance, and operation of the CAT system incurred by the CAT Plan Processor.”

<sup>37</sup> In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of executed equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. See CAT Funding Model Approval Order, 88 FR 62628, 62629.

CEBBs and CEBSs would each be subject to an equal fee, i.e., \$0.000007 per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange. Therefore, each month that Historical CAT Cost Recovery Assessment 1 is in effect, member CEBBs and CEBSs will pay a fee to FINRA based on the same transactions used to determine fees payable by CEBBs and CEBSs to CAT LLC under Historical CAT Assessment 1 for off-exchange transactions. FINRA believes that this approach is reasonable in that, as is the case with the SEC-approved funding model, it apportions the assessed fee for members equally between the CAT Executing Brokers for the buyer and the seller.<sup>38</sup>

From December 1, 2022 through November 30, 2023, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant SRO was approximately 100 billion shares.<sup>39</sup> Assuming similar 2024 trading volumes, under Historical CAT Cost Recovery Assessment 1, FINRA would recover its portion of the Participants' assessed share of Historical CAT Costs 1 within approximately four months. Given the relatively modest fee rate and amount to be recovered, the expected four-month recovery period is fair, reasonable, and equitable, and will allow FINRA to recover its costs in a relatively short timeframe without imposing significant additional financial or compliance burdens on members. Given the expected duration of four months, Historic CAT Cost Recovery Assessment 1 is also unlikely to significantly overlap with any future CAT assessments under the CAT Funding Model or any future

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<sup>38</sup> See supra note 37.

<sup>39</sup> See supra note 24.

CAT cost recovery assessment passed through by FINRA (which would be subject to separate proposed rule changes with the Commission).

**4. Self-Regulatory Organization's Statement on Burden on Competition**

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(9) of the Act<sup>40</sup> requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. FINRA notes that Historical CAT Cost Recovery Assessment 1 is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.<sup>41</sup> The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things.<sup>42</sup> Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. The

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<sup>40</sup> 15 U.S.C. 78o-3(b)(9).

<sup>41</sup> See CAT Funding Model Approval Order, 88 FR 62628, 62678-86.

<sup>42</sup> See supra note 41.

Historical CAT Cost Recovery Assessment 1 fee framework is consistent with the fee framework of the CAT Funding Model, as approved by the SEC.

As discussed in File No. SR-FINRA-2024-002, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Cost Recovery Assessment 1, for these same reasons, is reasonable and would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

#### Economic Impact Assessment

Based on the regulatory need discussed above and summarized below, FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts of the proposed rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.

#### Regulatory Need

On September 6, 2023, the Commission approved an amendment to the CAT NMS Plan that implements a revised funding model for CAT, the CAT Funding Model.<sup>43</sup> This CAT Funding Model provides a framework for recovering past and future CAT costs, including a method for allocating these costs among Participants and Industry Members (with two-thirds of costs to be assessed directly on the industry and one-third to be assessed on the Participants).<sup>44</sup>

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<sup>43</sup> See CAT Funding Model Approval Order.

<sup>44</sup> The CAT Funding Model establishes two categories of fees: (1) prospective fees (which includes fees for costs not previously paid by the SROs); and (2) past fees (which includes fees payable by industry members regarding CAT costs

The SEC's approval order for the CAT Funding Model also recognized that Participants may choose to pass-through their one-third portion of CAT Costs to their members. FINRA intends to recover from its members FINRA's portion of the Participants' share of Historical CAT Costs 1. As stated in FINRA's comment letters, as a not-for-profit national securities association that relies primarily on regulatory fees from members for funding, FINRA must increase member fees to fund CAT costs so as not to jeopardize FINRA's ability to meet its regulatory mission.<sup>45</sup>

#### Economic Baseline

Participants have paid Historical CAT Costs 1, incurred prior to January 1, 2022, in the amount of \$337,688,610.<sup>46</sup> Applying the SEC-approved CAT Funding Model, Industry Members are responsible for two-thirds of these costs, which amounts to \$225,125,740, and one-third of these costs is allocated to Participants, which amounts to \$112,562,870. FINRA's share of Historical CAT Costs 1 is \$4,613,250 (or approximately 4.1% of the Participants' one-third portion of Historical CAT Costs 1).

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 by dividing Historical CAT Costs 1

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previously paid by the Participants). With respect to the industry portion, the Plan provides that each executing broker for the buyer and executing broker for the seller would be required to pay a fee for each transaction in an eligible security that is determined by multiplying the number of executed equivalent shares in the transaction by one-third, and by the fee rate established by the Operating Committee.

<sup>45</sup> See supra note 11.

<sup>46</sup> As discussed above, Historical CAT Costs 1 include technology (cloud hosting services and operating, CAIS operating, and change request fees), legal, consulting, insurance, professional and administration, and public relations costs.

(\$337,688,610) by the projected total executed share volume of all transactions in Eligible Securities over 24 months (7,685,722,694,558.88 shares). Based on this calculation, the Operating Committee determined that Historical Fee Rate 1 would be \$0.0000439371316687066 per executed equivalent share. Under the CAT Funding Model, each CEBB, CEBS and relevant Participant for a given transaction in an Eligible Security is responsible for one-third of that rate, or \$0.00001464571055623553 per executed equivalent share.

To recover FINRA's contribution to the Participants' one-third share of Historical CAT Costs 1, consistent with the approach taken in the CAT Funding Model, FINRA is proposing to equally apportion the fee rate between the member firm CEBB and CEBS for each relevant transaction, such that each would pay \$0.000007 (i.e., 0.5 x \$0.00001464571055623553) per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange.

Historical CAT Cost Recovery Assessment 1 will remain in effect through the month in which FINRA recovers from FINRA member CEBBs and CEBSs collectively its contribution to the one-third share of Historical CAT Costs 1. For the purposes of estimating the recovery period for the Historical CAT Cost Recovery Assessment 1, FINRA computed an executed equivalent share volume for OTC transactions in NMS stocks and OTC equity securities for the twelve months from December 1, 2022 through November 30, 2023. Assuming similar 2024 trading volume, given an estimated executed equivalent share volume of 1,220,781,467,645 shares<sup>47</sup> and a fee rate of

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<sup>47</sup> For the twelve months from December 1, 2022 through November 30, 2023, 1,208,689,888,387 shares of NMS stocks were reported to the TRF, and



\$0.000007 per executed equivalent share for each CEBB and CEBS, FINRA estimates that it would recover its one-third share of Historical CAT Costs 1 in four months. The actual recovery period could be a longer or shorter period of time depending on actual trade volume.

For the twelve months from December 1, 2022 through November 30, 2023, based on transactions reported to a FINRA TRF or to the ORF, there were 883 firm MPIDs that executed at least one purchase or sale of an equivalent share of an Eligible Security. The top 50 MPIDs by reported executed equivalent share volume bought and/or sold 2,077,385,279,612 equivalent shares, or 85.08% of total shares bought and/or sold.

#### Potential Economic Benefits, Costs and Competitive Impact

FINRA's proposal to recover its portion of the Participants' one-third share of Historical CAT Costs applies an approach consistent with the CAT Funding Model as approved by the SEC.<sup>48</sup> With regard to off-exchange transactions in Eligible Securities, generally the same members that will be assessed Historical CAT Cost Recovery Assessment 1 will also be assessed Historical CAT Assessment 1. Therefore, FINRA's proposed approach in recovering its portion of Historical CAT Costs 1, which is consistent with the framework of the CAT Funding Model, should serve to mitigate costs

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1,209,157,925,786 shares of OTC Equity Securities were reported to ORF. Given that each executed share for a transaction in an OTC Equity Security is counted as 0.01 equivalent share, FINRA estimates that the executed equivalent share volume for NMS stocks and OTC Equity Securities reported to any FINRA trade reporting facility in that one-year period is 1,220,781,467,645 shares.

<sup>48</sup> See CAT Funding Model Approval Order.

for member firms with respect to the structure of the fee model, whereas a different proposed fee structure may involve additional costs or complexity.

The recovery period for FINRA's portion of the one-third share of Historical CAT Costs 1 is expected to be four months, which is shorter than the Historical Recovery Period for the two-thirds portion of Historical CAT Costs 1 assessed to Industry Members.<sup>49</sup> Given the expected duration, Historic CAT Cost Recovery Assessment 1 is unlikely to overlap with any future CAT assessments under the CAT Funding Model or any future CAT cost recovery assessment passed through by FINRA, which would be subject to separate proposed rule changes with the Commission.

Where CEBB and CEBS choose to pass Historical CAT Cost Recovery Assessment 1 on to customers, some customers could attempt to avoid incurring this temporary cost by delaying trades until after the FINRA's contribution to the Participants' one-third share of Historical CAT Costs 1 is paid. FINRA believes this is an unlikely event because this fee is only one part of a trader's decision to not trade and potentially miss a trading opportunity. In addition, as the Historical CAT Cost Recovery Assessment 1 recovery period is dependent on the level of trading activity, delaying trading may only serve to lengthen the recovery period. However, traders that do trade during the recovery period may incur relatively more fees than those that trade after the recovery period has ended.

As the SEC noted in approving the revised CAT Funding Model, if FINRA passes on its portion of the CAT fee allocation to its member firms and exchanges choose not to pass-through their CAT fee allocations to their members, the cost to transact off exchange

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<sup>49</sup> See File No. SR-FINRA-2024-002.

may increase relative to executing on an exchange, potentially giving exchanges a competitive advantage.<sup>50</sup> However, we do not know whether or to what extent (or how) the exchanges may seek to recover their portion of the Historical CAT Costs, and we do not know whether or to what extent member firms will choose to pass through exchange-incurred CAT fees to customers. We also note that FINRA members remain subject to regulatory obligations, such as best execution obligations, with respect to their order routing decisions.

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

Written comments were neither solicited nor received.

**6. Extension of Time Period for Commission Action**

Not applicable.

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>51</sup> and paragraph (f)(2) of Rule 19b-4 thereunder,<sup>52</sup> in that the proposed rule change is establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization. This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the

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<sup>50</sup> See CAT Funding Model Approval Order, 88 FR 62628, 62684.

<sup>51</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>52</sup> 17 CFR 240.19b-4(f)(2).

Commission pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>53</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>54</sup> Accordingly, the proposed rule change would take effect upon filing with the Commission.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not Applicable.

**9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**11. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

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<sup>53</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>54</sup> 17 CFR 240.19b-4(f)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-FINRA-2024-003)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) to Implement a Historical Consolidated Audit Trail Recovery Assessment

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) to implement a historical Consolidated Audit Trail (“CAT”) recovery assessment through

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

which FINRA would recoup its contributions to recoverable historical CAT costs incurred prior to January 1, 2022.<sup>5</sup>

The text of the proposed rule change is available on FINRA’s website at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations (“SROs”) to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would

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<sup>5</sup> Pursuant to Section 11.3(b) of the CAT NMS Plan, FINRA filed a separate proposed rule change to establish fees assessed to Industry Members, payable to Consolidated Audit Trail, LLC, related to recoverable historical CAT costs incurred prior to January 1, 2022. See File No. SR-FINRA-2024-002. Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the CAT NMS Plan and FINRA Rule 6800 Series (Consolidated Audit Trail Compliance Rule).

capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification, or execution.<sup>6</sup> On November 15, 2016, the Commission approved the CAT NMS Plan (“Plan” or “CAT NMS Plan”).<sup>7</sup> Under the CAT NMS Plan, the Operating Committee has the discretion to establish funding for Consolidated Audit Trail, LLC (“CAT LLC”) to operate the CAT, including establishing fees for Industry Members to be assessed by CAT LLC that would be implemented on behalf of CAT LLC by the Participants.<sup>8</sup> The Operating Committee adopted a revised funding model to fund the CAT (“CAT Funding Model”) and, on September 6, 2023, the Commission approved the CAT Funding Model, after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.<sup>9</sup>

The CAT Funding Model provides a framework for the recovery of the costs to create, develop, and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by

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<sup>6</sup> See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45721 (August 1, 2012).

<sup>7</sup> See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“CAT NMS Plan Approval Order”).

<sup>8</sup> See Section 11.1(b) of the CAT NMS Plan.

<sup>9</sup> See Securities Exchange Act Release No. 98290 (September 6, 2023), 88 FR 62628 (September 12, 2023) (“CAT Funding Model Approval Order”).

the Participants (“Historical CAT Assessment” fees);<sup>10</sup> and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs.<sup>11</sup> With respect to Historical CAT Assessment fees, to date, the CAT Operating Committee has established Historical CAT Assessment 1 with regard to historical CAT costs incurred prior to January 1, 2022 (“Historical CAT Costs 1”).<sup>12</sup>

In light of the approval of the CAT Funding Model and the filing of File No. SR-FINRA-2024-002, FINRA is similarly filing the instant proposed rule change to establish a fee to allow FINRA to recoup its contributions to the Participants’ assessed share of Historical CAT Costs 1 (“Historical CAT Cost Recovery Assessment 1”). Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1—amounting to \$4,613,250—in a manner consistent with the Exchange Act and the CAT Funding Model Approval Order. In the Approval Order, the Commission acknowledged that “the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act.”<sup>13</sup> The Commission also noted FINRA’s statement “that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.”<sup>14</sup> Given the approval of the CAT Funding Model and

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<sup>10</sup> See Section 11.3(b) of the CAT NMS Plan.

<sup>11</sup> See Section 11.3(a) of the CAT NMS Plan.

<sup>12</sup> See File No. SR-FINRA-2024-002.

<sup>13</sup> CAT Funding Model Approval Order, 88 FR 62628, 62636-37.

<sup>14</sup> FINRA has consistently made clear its intention to file a rule change to implement member CAT fees simultaneous with the filing of any proposed rule change to effectuate the CAT Funding Model. See Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa



FINRA's proposed rule change to establish Historical CAT Assessment 1 to effectuate the CAT Funding Model,<sup>15</sup> FINRA is submitting this filing to implement Historical CAT Cost Recovery Assessment 1.<sup>16</sup>

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Countryman, Secretary, Commission, dated April 11, 2023 (“FINRA April 2023 Letter”) at 7 (“If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model.”); see also Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, Commission, dated June 22, 2022 (“FINRA June 2022 Letter”) at 6 (“[G]iven FINRA’s unique nature, FINRA necessarily must seek recovery in turn for the costs it is allocated.”). FINRA also requested that if the Commission were to approve the CAT Funding Model, that it acknowledge “FINRA’s need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA’s ability to carry out its critical regulatory mission.” See CAT Funding Model Approval Order, 88 FR 62628, 62645.

<sup>15</sup> See File No. SR-FINRA-2024-002.

<sup>16</sup> The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.” See Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan. The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, ... the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.” See Section 11.6(b) of the CAT NMS Plan. As discussed in File No. SR-FINRA-2024-002, all applicable Financial Accountability Milestones for Historical CAT Assessment 1 and, by extension, Historical CAT Cost Recovery Assessment 1 – that is, Period 1, Period 2, and Period 3 of the Financial Accountability Milestones – have been satisfied. Furthermore, the costs sought to be recovered via both Historical CAT Assessment 1 and Historical CAT Cost Recovery Assessment 1 relate to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

FINRA's Portion of Historical CAT Costs 1

As discussed in File No. SR-FINRA-2024-002, which seeks to implement Historical CAT Assessment 1,<sup>17</sup> to date, FINRA and the other Participants have agreed to pay all Past CAT Costs via loans to CAT LLC. Specifically, in the absence of an SEC-approved model establishing how the Participants were to fund the creation, implementation, and maintenance of the CAT, in 2017, FINRA and the other Participants unanimously agreed to apportion all CAT operational costs amongst the group and to fund the CAT through a series of interest-free loans. Through these loans, FINRA contributed \$13,839,748 or roughly 4.1% toward the \$337,688,610 in operating expenses composing Historical CAT Costs 1. Of that approximately \$13.8 million expenditure, FINRA expects to recover \$9,226,499 in loan repayments from CAT LLC following implementation of Historical CAT Assessment 1, and, under the CAT Funding Model, will forgive the remaining \$4,613,250, which FINRA now seeks to recover through the implementation of Historical CAT Cost Recovery Assessment 1.<sup>18</sup>

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<sup>17</sup> Historical CAT Assessment 1 seeks to recover from CAT Executing Brokers two-thirds of Historical CAT Costs 1—the \$337,688,610 in recoverable costs incurred by CAT LLC prior to January 1, 2022. Participants collectively will remain responsible for one-third of Historical CAT Costs 1 or \$112,562,870.

<sup>18</sup> FINRA notes that, as is the case with respect to Historical CAT Assessment 1 discussed in File No. SR-FINRA-2024-002, FINRA's recovery under the instant proposed rule change also would not include any portion of Excluded Costs, *i.e.*, \$48,874,937 of costs incurred from November 15, 2017 through November 15, 2018, and \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor. See CAT Funding Model Approval Order, 88 FR 62628, 62660 n704.

The following table illustrates FINRA’s approximate contributions to the Plan Participants’ collective one-third share of Historical CAT Costs 1 during each of the relevant periods.<sup>19</sup>

Period	Participants’ Collective Share of Historical CAT Costs 1	FINRA’s Share of Historical CAT Costs 1
Pre-FAM Period (Prior to June 22, 2020)	\$47,973,174	\$1,966,120
FAM Period 1	\$2,125,781	\$87,123
FAM Period 2	\$14,325,493	\$587,113
FAM Period 3	\$48,138,423	\$1,972,894
Total (through January 1, 2022)	\$112,562,870	\$4,613,250

FINRA’s recovery of these approximately \$4.6 million in CAT costs is reasonable and consistent with the Exchange Act. As discussed herein and in File No. SR-FINRA-2024-002, these costs incurred by FINRA were necessary to fund the design, implementation, and maintenance of the CAT. The approximately 4.1% of the Participants’ share of Historical CAT Costs 1 borne by FINRA is significantly smaller than the approximately 34% of the Participants’ share of Prospective CAT costs to be borne by FINRA under the SEC-approved CAT funding model.<sup>20</sup> As stated by FINRA and permitted under the Exchange Act, FINRA will seek to recover its portion of the

<sup>19</sup> A detailed description (including the amounts) of all costs incurred by the Participants during the pre-FAM period (prior to June 22, 2020) and during each relevant FAM period, *i.e.*, FAM Period 1, FAM Period 2, and FAM Period 3, is provided in File No. SR-FINRA-2024-002.

<sup>20</sup> See FINRA April 2023 Letter, *supra* note 14, at 3 (noting that, under the CAT Funding Model, FINRA “would be assessed an estimated 34% of the total CAT costs to be borne amongst the 25 SRO Plan Participants (based on 2021 data).”).

Participants' share of CAT costs to ensure that FINRA can fulfill its regulatory mandate and responsibilities.

#### Historical CAT Cost Recovery Assessment 1

FINRA is proposing to adopt Rule 6897(b) (CAT Cost Recovery Fees) to implement Historical CAT Cost Recovery Assessment 1 at this time to allow FINRA to recover its contributions to the Participants' one-third share of Historical CAT Costs 1.<sup>21</sup> FINRA intends that the fee framework for, and the commencement of payment of, the Historical CAT Cost Recovery Assessment 1 would correspond to the framework put in place under the SEC-approved CAT Funding Model and the timing for the commencement of Historical CAT Assessment 1, as provided for in File No. SR-FINRA-2024-002. Thus, as with Historical CAT Assessment 1, FINRA proposes that each member CAT Executing Broker shall receive its first invoice for Historical CAT Cost Recovery Assessment 1 in April 2024, setting forth fees calculated based on March 2024 transactions in Eligible Securities executed otherwise than on an exchange, as reflected in CAT Data. Consistent with the approach taken under the CAT Funding Model, FINRA proposes to equally apportion one-third of Historical Fee Rate 1 between the member CAT Executing Broker for the Buyer ("CEBB") and the member CAT Executing Broker for the Seller ("CEBS") for each transaction in Eligible Securities executed otherwise than on an exchange.<sup>22</sup> The following fields of the Participant Technical Specifications

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<sup>21</sup> In approving the CAT Funding Model, the Commission noted that it "believe[d] that FINRA's allocation of CAT fees likely will be passed through to Industry Members." See CAT Funding Model Approval Order, 88 FR 62628, 62684.

<sup>22</sup> As per Section 1.1 of the Plan, for a transaction in an Eligible Security executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, *i.e.*, one of FINRA's Trade Reporting Facilities (each a "TRF"), OTC Reporting Facility

indicate the CAT Executing Brokers for transactions executed otherwise than on an exchange.

TRF/ORF/ADF Transaction Data Event<sup>23</sup>

#	Field Name	Data Type	Description	Include Key
26	reportingExecutingMpid	Member Alias	MPID of the executing party	R
28	contraExecutingMpid	Member Alias	MPID of the contra-side executing party.	C

As discussed in File No. SR-FINRA-2024-002, the Operating Committee has determined that Historical Fee Rate 1 is \$0.0000439371316687066 per executed equivalent share, and, under the CAT Funding Model, each of the CEBB, CEBS and relevant Participant for a given transaction in an Eligible Security would be responsible for one-third of that rate, or \$0.00001464571055623553 per executed equivalent share.<sup>24</sup> In line with this approach, with respect to FINRA’s portion of the Participants’ one-third share, FINRA is proposing that, for Historical CAT Cost Recovery Assessment 1, the Participants’ assessed fee rate would be split evenly between the CEBB and CEBS to

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(“ORF”) or Alternative Display Facility (“ADF”), the CEBB and CEBS are the Industry Members identified as the executing broker and the contra-side executing broker in the TRF/ORF/ADF transaction data event in CAT Data. 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, and be required to pay the fee assessed to, both the CEBB and CEBS.

<sup>23</sup> See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

<sup>24</sup> Dividing \$0.0000439371316687066 by three equals \$0.00001464571055623553.

establish a Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share<sup>25</sup> for transactions where FINRA is the relevant Participant.<sup>26</sup>

To implement Historical CAT Cost Recovery Assessment 1, FINRA proposes to adopt Rule 6897(b)(1)(A)(i) to provide that each member CAT Executing Broker shall receive its first invoice in April 2024, setting forth the Historical CAT Cost Recovery Assessment 1 fees calculated based on transactions in March 2024, and shall receive similar invoices for each month thereafter in which Historical CAT Cost Recovery Assessment 1 is in effect. As provided in proposed Rule 6897(b)(1)(A)(ii), each monthly invoice shall set forth fees for each transaction in an Eligible Security executed by the CAT Executing Broker in its capacity as the CEBB and/or the CEBS (as applicable) otherwise than on an exchange as set forth in CAT Data. The Historical CAT Cost Recovery Assessment 1 fee assessed to each CEBB and CEBS for each such transaction will be calculated by multiplying the number of executed equivalent shares in the

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<sup>25</sup> In approving the CAT Funding Model, the Commission concluded that “the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken by the funding principles of the CAT NMS Plan.” See CAT Funding Model Approval Order, 88 FR 62628, 62640. Under the CAT NMS Plan, executed equivalent shares in a transaction in Eligible Securities are reasonably counted as follows: (1) each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (i.e., 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share. See Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan.

<sup>26</sup> Dividing \$0.00001464571055623553 by two and rounding to six decimal places equals \$0.000007. As with Historical CAT Assessment 1, FINRA determined to use six decimal places for Historical CAT Cost Recovery Fee Rate 1 to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

transaction by the Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share.

Further, as provided in proposed Rule 6897(b)(1)(A)(iii), Historical CAT Cost Recovery Assessment 1 will remain in effect until FINRA's approximately \$4.6 million contribution to the one-third share of Historical CAT Costs 1 assessed to the Plan Participants is collected from member CAT Executing Brokers collectively, which is estimated to be four months, but could be for a longer or shorter period of time.<sup>27</sup>

Proposed Rule 6897(b)(1)(A)(iv) confirms that each member CAT Executing broker shall be required to pay each invoice for Historical CAT Cost Recovery Assessment 1.

Historical CAT Cost Recovery Assessment 1 will be assessed for all transactions in Eligible Securities executed otherwise than on an exchange in each month through the end of the month in which FINRA's approximately \$4.6 million contribution to the Participants' one-third share of Historical CAT Costs 1 is assessed, and then FINRA will provide notice that Historical CAT Cost Recovery Assessment 1 is no longer in effect. As with Historical CAT Assessment 1, since Historical CAT Cost Recovery Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Cost Recovery Assessment 1 may result in the collection of more than FINRA's

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<sup>27</sup> From December 1, 2022 through November 30, 2023, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant SRO was approximately 100 billion shares. Assuming similar 2024 trading volumes, FINRA would recover its approximately \$4.6 million portion of the Participants' assessed share of Historical CAT Costs 1 within four months. Given the fee rate and total amount to be recovered, the proposed four-month recovery period is both reasonable and unlikely to significantly overlap with any future CAT assessments under the CAT Funding Model or any future CAT cost recovery assessment passed through by FINRA, which would be the subject of a separate proposed rule change.

approximately \$4.6 million contribution to Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Cost Recovery Assessment 1 is in effect will be used to offset future member fees assessed by FINRA to recover its contributions, as a Plan Participant, to CAT costs.<sup>28</sup>

FINRA also proposes to adopt Rule 6897(b)(2) to further describe the timing and manner of payment of Historical CAT Cost Recovery Assessment 1. The proposed provision requires member CAT Executing Brokers to pay Historical CAT Cost Recovery Assessment 1 on a monthly basis in the manner prescribed by FINRA. In addition, each CAT Executing Broker would be required to pay the Historical CAT Cost Recovery Assessment 1 within 30 days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).

FINRA also notes that, to assist Industry Members in complying with Historical CAT Assessment 1, each CAT Executing Broker will have access to mock invoices, made available by CAT LLC, with details for any fee liable transactions, including those executed otherwise than on an exchange for the months of November 2023, December 2023, January 2024 and February 2024.<sup>29</sup> Since Historical CAT Cost Recovery Assessment 1 will allocate fees to each member CAT Executing Broker based on the same transactions used by CAT LLC to assess the off-exchange portion of Historical CAT Assessment 1 each month, member CAT Executing Brokers may also use the off-exchange transaction data provided by CAT LLC in the mock invoices to prepare for

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<sup>28</sup> A similar approach will be taken by CAT LLC with respect to any excess money collected pursuant to Historical CAT Assessment 1 during its final month. See File No. SR-FINRA-2024-002.

<sup>29</sup> See File No. SR-FINRA-2024-002.



compliance with Historical CAT Cost Recovery Assessment 1. To further assist, beginning with the initial invoice in April 2024, FINRA also intends to make available to each member CAT Executing Broker a separate copy of the relevant details for fee liable transactions executed each month otherwise than on an exchange.

Furthermore, FINRA will also make publicly available on its website: (i) the total amount invoiced each month that Historical CAT Cost Recovery Assessment 1 is in effect, (ii) the total amount invoiced for Historical CAT Cost Recovery Assessment 1 for all months since its commencement, and (iii) the total costs remaining to be collected from members in aggregate for Historical CAT Cost Recovery Assessment 1. By reviewing statistics regarding how much has been invoiced and how much remains to be invoiced for Historical CAT Cost Recovery Assessment 1, members would have sufficient information to reasonably track how much longer Historical CAT Cost Recovery Assessment 1 is likely to be in place.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>30</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and must not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. FINRA also believes that the proposed rule change is

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<sup>30</sup> 15 U.S.C. 78q-3(b)(6).

consistent with the provisions of Section 15A(b)(5) of the Act,<sup>31</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act, which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.<sup>32</sup> Section 15A(b)(2) of the Act also requires that FINRA be “so organized and [have] the capacity to be able to carry out the purposes” of the Act and “to comply, and . . . to enforce compliance by its members, and persons associated with its members,” with the provisions of the Exchange Act.<sup>33</sup>

FINRA believes that this proposed rule change is consistent with the Act because it is designed to assist FINRA in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”<sup>34</sup> To the extent that this proposed rule change implements a requirement that facilitates FINRA’s achievement of its regulatory obligations under the Plan and applies specific requirements to FINRA members in this regard, FINRA believes that this proposed rule

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<sup>31</sup> 15 U.S.C. 78o-3(b)(5).

<sup>32</sup> 15 U.S.C. 78o-3(b)(9).

<sup>33</sup> See 15 U.S.C. 78o-3(b)(2).

<sup>34</sup> CAT NMS Plan Approval Order, 81 FR 84696, 84697.

change furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

As discussed in detail in File No. SR-FINRA-2024-002, FINRA believes that the proposed fees paid by the CEBBs and CEBSs in connection with Historical CAT Assessment 1 are reasonable, equitably allocated and not unfairly discriminatory. Historical CAT Cost Recovery Assessment 1 would similarly allow FINRA to recover its costs from member CAT Executing Brokers in a fair and reasonable manner, as contemplated by the Exchange Act and consistent with the CAT Funding Model Approval Order.

Proposed Historical CAT Cost Recovery Assessment 1 would be charged to member CAT Executing Brokers in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes. The proposed fees would not cover FINRA services unrelated to the CAT, and any surplus would be used as a reserve to offset future member fees assessed by FINRA to recover its contributions, as a Plan Participant, to CAT costs. Accordingly, FINRA believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

The reasonableness of Historical CAT Cost Recovery Assessment 1 and its consistency with the Exchange Act likewise is grounded in the facts described above and detailed in File No. SR-FINRA-2024-002. Specifically, the expenses that compose the portion of Past CAT Costs sought to be recovered through Historical CAT Cost Recovery Assessment 1 were recognized by the SEC as appropriate for recovery pursuant to the formula approved in the CAT Funding Model (i.e., technology, legal, consulting,

insurance, professional administration, and public relations costs). FINRA has determined that these costs, which are described in detail in File No. SR-FINRA-2024-002, are reasonable and it is appropriate that FINRA recover its Participant contribution to such costs through Historical CAT Cost Recovery Assessment 1. FINRA also has determined that Historical CAT Cost Recovery Assessment 1 provides for the equitable allocation of fees among FINRA members and is not unfairly discriminatory, as discussed herein.

Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1, consistent with the Exchange Act and the CAT Funding Model Approval Order. In approving the CAT Funding Model, the Commission noted FINRA's request that it acknowledge "FINRA's need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA's ability to carry out its critical regulatory mission."<sup>35</sup> The Commission also recognized that "the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act."<sup>36</sup> The Commission further noted FINRA's statement "that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model."<sup>37</sup> The instant proposed rule change to adopt Historical CAT Cost Recovery Assessment 1 represents such a fee with respect to Historical CAT Costs 1.

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<sup>35</sup> See CAT Funding Model Approval Order, 88 FR 62628, 62645.

<sup>36</sup> See supra note 35 at 62636-37.

<sup>37</sup> See supra note 35.

Without a mechanism to recover its CAT costs, FINRA, a not-for-profit, national securities association, would not be able to effectively sustain its regulatory mission. Thus, consistent with the cost allocation framework put in place by the SEC-approved CAT Funding Model, whereby CEBBs and CEBSs share equal responsibility for the costs assessed directly to Industry Members based on their transactions in Eligible Securities, FINRA is seeking to recoup these historical CAT costs in a like manner that is fair, reasonable, and equitably allocated among FINRA's member firms in their capacity as CAT Executing Brokers.

Historical CAT Cost Recovery Assessment 1 will also allow FINRA to align its operating expenses with its operating revenues, target break-even cash flows, and continue to responsibly manage expenses driven by mandatory initiatives, like the CAT NMS Plan, in a manner consistent with FINRA's public Financial Guiding Principles.<sup>38</sup> FINRA periodically increases its regulatory fees to cover increased costs and scope of address of its member regulatory program; however, those fee increases are not designed to recover the separate costs associated with the development, maintenance, and operation of the CAT system under the CAT NMS Plan.<sup>39</sup>

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<sup>38</sup> See FINRA's Financial Guiding Principles, [https://www.finra.org/sites/default/files/finra\\_financial\\_guiding\\_principles\\_0.pdf](https://www.finra.org/sites/default/files/finra_financial_guiding_principles_0.pdf).

<sup>39</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592, 66602-03 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032). As FINRA explained:

“In addition to costs associated with its CAT reporting compliance program, FINRA must account for significant costs to integrate CAT data into its regulatory systems...Importantly, these costs are separate from and in addition to FINRA's obligation to contribute funding for the development, maintenance, and operation of the CAT system incurred by the CAT Plan Processor.”

FINRA's approach in determining Historical CAT Cost Recovery Fee Rate 1, which is consistent with the approach provided for under the SEC-approved Funding Model, is also reasonable and consistent with the Exchange Act. Specifically, similar to the CAT cost assessment methodology approved by the Commission, FINRA proposes to allocate equally among member CEBBs and CEBSs the portion of Participants' one-third share of Historical CAT Costs 1 previously paid by FINRA.<sup>40</sup> FINRA proposes to determine Historical CAT Cost Recovery Fee Rate 1 by multiplying the portion of Historical Fee Rate 1 assessed to the Participants under the CAT Funding Model, *i.e.*, \$0.00001464571055623553 per executed equivalent share, by one-half such that member CEBBs and CEBSs would each be subject to an equal fee, *i.e.*, \$0.000007 per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange. Therefore, each month that Historical CAT Cost Recovery Assessment 1 is in effect, member CEBBs and CEBSs will pay a fee to FINRA based on the same transactions used to determine fees payable by CEBBs and CEBSs to CAT LLC under Historical CAT Assessment 1 for off-exchange transactions. FINRA believes that this approach is reasonable in that, as is the case with the SEC-approved funding model, it

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<sup>40</sup> In its approval of the CAT Funding Model, the Commission determined that charging CAT fees to CAT Executing Brokers was reasonable. In reaching this conclusion the Commission noted that the use of CAT Executing Brokers is appropriate because the CAT Funding Model is based upon the calculation of executed equivalent shares, and, therefore, charging CAT Executing Brokers would reflect their executing role in each transaction. Furthermore, the Commission noted that, because CAT Executing Brokers are already identified in transaction reports from FINRA's equity trade reporting facilities recorded in CAT Data, charging CAT Executing Brokers could streamline the billing process. See CAT Funding Model Approval Order, 88 FR 62628, 62629.

apportions the assessed fee for members equally between the CAT Executing Brokers for the buyer and the seller.<sup>41</sup>

From December 1, 2022 through November 30, 2023, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant SRO was approximately 100 billion shares.<sup>42</sup> Assuming similar 2024 trading volumes, under Historical CAT Cost Recovery Assessment 1, FINRA would recover its portion of the Participants' assessed share of Historical CAT Costs 1 within approximately four months. Given the relatively modest fee rate and amount to be recovered, the expected four-month recovery period is fair, reasonable, and equitable, and will allow FINRA to recover its costs in a relatively short timeframe without imposing significant additional financial or compliance burdens on members. Given the expected duration of four months, Historic CAT Cost Recovery Assessment 1 is also unlikely to significantly overlap with any future CAT assessments under the CAT Funding Model or any future CAT cost recovery assessment passed through by FINRA (which would be subject to separate proposed rule changes with the Commission).

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(9) of the Act<sup>43</sup> requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the

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<sup>41</sup> See supra note 40.

<sup>42</sup> See supra note 27.

<sup>43</sup> 15 U.S.C. 78o-3(b)(9).

Exchange Act. FINRA notes that Historical CAT Cost Recovery Assessment 1 is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.<sup>44</sup> The SEC also analyzed the potential effect of CAT fees calculated pursuant to the CAT Funding Model on affected categories of market participants, including Participants (including exchanges and FINRA), Industry Members (including subcategories of Industry Members, such as alternative trading systems, CAT Executing Brokers and market makers), and investors generally, and considered market effects related to equities and options, among other things.<sup>45</sup> Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. The Historical CAT Cost Recovery Assessment 1 fee framework is consistent with the fee framework of the CAT Funding Model, as approved by the SEC.

As discussed in File No. SR-FINRA-2024-002, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Cost Recovery Assessment 1, for these same reasons, is reasonable and would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

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<sup>44</sup> See CAT Funding Model Approval Order, 88 FR 62628, 62678-86.

<sup>45</sup> See supra note 44.



### Economic Impact Assessment

Based on the regulatory need discussed above and summarized below, FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts of the proposed rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.

### Regulatory Need

On September 6, 2023, the Commission approved an amendment to the CAT NMS Plan that implements a revised funding model for CAT, the CAT Funding Model.<sup>46</sup> This CAT Funding Model provides a framework for recovering past and future CAT costs, including a method for allocating these costs among Participants and Industry Members (with two-thirds of costs to be assessed directly on the industry and one-third to be assessed on the Participants).<sup>47</sup>

The SEC's approval order for the CAT Funding Model also recognized that Participants may choose to pass-through their one-third portion of CAT Costs to their members. FINRA intends to recover from its members FINRA's portion of the Participants' share of Historical CAT Costs 1. As stated in FINRA's comment letters, as a not-for-profit national securities association that relies primarily on regulatory fees

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<sup>46</sup> See CAT Funding Model Approval Order.

<sup>47</sup> The CAT Funding Model establishes two categories of fees: (1) prospective fees (which includes fees for costs not previously paid by the SROs); and (2) past fees (which includes fees payable by industry members regarding CAT costs previously paid by the Participants). With respect to the industry portion, the Plan provides that each executing broker for the buyer and executing broker for the seller would be required to pay a fee for each transaction in an eligible security that is determined by multiplying the number of executed equivalent shares in the transaction by one-third, and by the fee rate established by the Operating Committee.

from members for funding, FINRA must increase member fees to fund CAT costs so as not to jeopardize FINRA's ability to meet its regulatory mission.<sup>48</sup>

#### Economic Baseline

Participants have paid Historical CAT Costs 1, incurred prior to January 1, 2022, in the amount of \$337,688,610.<sup>49</sup> Applying the SEC-approved CAT Funding Model, Industry Members are responsible for two-thirds of these costs, which amounts to \$225,125,740, and one-third of these costs is allocated to Participants, which amounts to \$112,562,870. FINRA's share of Historical CAT Costs 1 is \$4,613,250 (or approximately 4.1% of the Participants' one-third portion of Historical CAT Costs 1).

The Operating Committee determined the Historical Fee Rate to be used in calculating Historical CAT Assessment 1 by dividing Historical CAT Costs 1 (\$337,688,610) by the projected total executed share volume of all transactions in Eligible Securities over 24 months (7,685,722,694,558.88 shares). Based on this calculation, the Operating Committee determined that Historical Fee Rate 1 would be \$0.0000439371316687066 per executed equivalent share. Under the CAT Funding Model, each CEBB, CEBS and relevant Participant for a given transaction in an Eligible Security is responsible for one-third of that rate, or \$0.00001464571055623553 per executed equivalent share.

To recover FINRA's contribution to the Participants' one-third share of Historical CAT Costs 1, consistent with the approach taken in the CAT Funding Model, FINRA is

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<sup>48</sup> See supra note 14.

<sup>49</sup> As discussed above, Historical CAT Costs 1 include technology (cloud hosting services and operating, CAIS operating, and change request fees), legal, consulting, insurance, professional and administration, and public relations costs.

proposing to equally apportion the fee rate between the member firm CEBB and CEBS for each relevant transaction, such that each would pay \$0.000007 (i.e., 0.5 x \$0.00001464571055623553) per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange.

Historical CAT Cost Recovery Assessment 1 will remain in effect through the month in which FINRA recovers from FINRA member CEBBs and CEBSs collectively its contribution to the one-third share of Historical CAT Costs 1. For the purposes of estimating the recovery period for the Historical CAT Cost Recovery Assessment 1, FINRA computed an executed equivalent share volume for OTC transactions in NMS stocks and OTC equity securities for the twelve months from December 1, 2022 through November 30, 2023. Assuming similar 2024 trading volume, given an estimated executed equivalent share volume of 1,220,781,467,645 shares<sup>50</sup> and a fee rate of \$0.000007 per executed equivalent share for each CEBB and CEBS, FINRA estimates that it would recover its one-third share of Historical CAT Costs 1 in four months. The actual recovery period could be a longer or shorter period of time depending on actual trade volume.

For the twelve months from December 1, 2022 through November 30, 2023, based on transactions reported to a FINRA TRF or to the ORF, there were 883 firm MPIDs that executed at least one purchase or sale of an equivalent share of an Eligible

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<sup>50</sup> For the twelve months from December 1, 2022 through November 30, 2023, 1,208,689,888,387 shares of NMS stocks were reported to the TRF, and 1,209,157,925,786 shares of OTC Equity Securities were reported to ORF. Given that each executed share for a transaction in an OTC Equity Security is counted as 0.01 equivalent share, FINRA estimates that the executed equivalent share volume for NMS stocks and OTC Equity Securities reported to any FINRA trade reporting facility in that one-year period is 1,220,781,467,645 shares.

Security. The top 50 MPIDs by reported executed equivalent share volume bought and/or sold 2,077,385,279,612 equivalent shares, or 85.08% of total shares bought and/or sold.

Potential Economic Benefits, Costs and Competitive Impact

FINRA's proposal to recover its portion of the Participants' one-third share of Historical CAT Costs applies an approach consistent with the CAT Funding Model as approved by the SEC.<sup>51</sup> With regard to off-exchange transactions in Eligible Securities, generally the same members that will be assessed Historical CAT Cost Recovery Assessment 1 will also be assessed Historical CAT Assessment 1. Therefore, FINRA's proposed approach in recovering its portion of Historical CAT Costs 1, which is consistent with the framework of the CAT Funding Model, should serve to mitigate costs for member firms with respect to the structure of the fee model, whereas a different proposed fee structure may involve additional costs or complexity.

The recovery period for FINRA's portion of the one-third share of Historical CAT Costs 1 is expected to be four months, which is shorter than the Historical Recovery Period for the two-thirds portion of Historical CAT Costs 1 assessed to Industry Members.<sup>52</sup> Given the expected duration, Historic CAT Cost Recovery Assessment 1 is unlikely to overlap with any future CAT assessments under the CAT Funding Model or any future CAT cost recovery assessment passed through by FINRA, which would be subject to separate proposed rule changes with the Commission.

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<sup>51</sup> See CAT Funding Model Approval Order.

<sup>52</sup> See File No. SR-FINRA-2024-002.

Where CEBB and CEBS choose to pass Historical CAT Cost Recovery Assessment 1 on to customers, some customers could attempt to avoid incurring this temporary cost by delaying trades until after the FINRA's contribution to the Participants' one-third share of Historical CAT Costs 1 is paid. FINRA believes this is an unlikely event because this fee is only one part of a trader's decision to not trade and potentially miss a trading opportunity. In addition, as the Historical CAT Cost Recovery Assessment 1 recovery period is dependent on the level of trading activity, delaying trading may only serve to lengthen the recovery period. However, traders that do trade during the recovery period may incur relatively more fees than those that trade after the recovery period has ended.

As the SEC noted in approving the revised CAT Funding Model, if FINRA passes on its portion of the CAT fee allocation to its member firms and exchanges choose not to pass-through their CAT fee allocations to their members, the cost to transact off exchange may increase relative to executing on an exchange, potentially giving exchanges a competitive advantage.<sup>53</sup> However, we do not know whether or to what extent (or how) the exchanges may seek to recover their portion of the Historical CAT Costs, and we do not know whether or to what extent member firms will choose to pass through exchange-incurred CAT fees to customers. We also note that FINRA members remain subject to regulatory obligations, such as best execution obligations, with respect to their order routing decisions.

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<sup>53</sup> See CAT Funding Model Approval Order, 88 FR 62628, 62684.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>54</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>55</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2024-003 on the subject line.

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<sup>54</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>55</sup> 17 CFR 240.19b-4(f)(2).

Paper Comments:

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

All submissions should refer to File Number SR-FINRA-2024-003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2024-003 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>56</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>56</sup> 17 CFR 200.30-3(a)(12).



**EXHIBIT 5**

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**6000. QUOTATION, ORDER, AND TRANSACTION REPORTING FACILITIES**

\* \* \* \* \*

**6800. CONSOLIDATED AUDIT TRAIL COMPLIANCE RULE**

\* \* \* \* \*

**6897. Consolidated Audit Trail Funding Fees**

(a) No Change.

**(b) CAT Cost Recovery Fees**

**(1) Fee Assessments**

**(A) Historical CAT Cost Recovery Assessment 1**

(i) Each member CAT Executing Broker shall receive its first invoice for Historical CAT Cost Recovery Assessment 1 in April 2024, which shall set forth the Historical CAT Cost Recovery Assessment 1 fees calculated based on transactions in March 2024, and shall receive an invoice for Historical CAT Cost Recovery Assessment 1 for each month thereafter in which Historical CAT Cost Recovery Assessment 1 is in effect.

(ii) FINRA shall provide each member CAT Executing Broker with an invoice for Historical CAT Cost Recovery Assessment 1 on a monthly basis. Each month, such invoices shall set forth a fee for each transaction in Eligible Securities executed

by the CAT Executing Broker in its capacity as a CAT Executing Broker for the Buyer (“CEBB”) and/or the CAT Executing Broker for the Seller (“CEBS”) (as applicable) otherwise than on an exchange from the prior month as set forth in CAT Data. The fee for each such transaction will be calculated by multiplying the number of executed equivalent shares in the transaction by the fee rate of \$0.000007 per executed equivalent share.

(iii) Historical CAT Cost Recovery Assessment 1 will remain in effect until \$4,613,250 (FINRA’s contribution to the one-third share of Historical CAT Costs 1 assessed to the Plan Participants) are collected from member CAT Executing Brokers collectively, which is estimated to be four months, but could be for a longer or shorter period of time. FINRA will provide notice when Historical CAT Cost Recovery Assessment 1 will no longer be in effect.

(iv) Each member CAT Executing Broker shall be required to pay each invoice for Historical CAT Cost Recovery Assessment 1 in accordance with paragraph (b)(2) of this Rule.

## **(2) Timing and Manner of Payments**

(A) Each member CAT Executing Broker shall pay the CAT Cost Recovery Fees as required pursuant to paragraph (b)(1)(A) of this Rule each month to FINRA in the manner prescribed by FINRA.

(B) Each member CAT Executing Broker shall pay the CAT Cost Recovery Fees required pursuant to paragraph (b)(1)(A) of this Rule within 30 days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).

••• **Supplementary Material:** -----

**.01** No Change.

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