

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-81067 ; File Nos. SR-BatsBYX-2017-11; SR-BatsBZX-2017-38; SR-BatsEDGA-2017-13; SR-BatsEDGX-2017-22; SR-BOX-2017-16; SR-BX-2017-023; SR-C2-2017-017; SR-CBOE-2017-040; SR-CHX-2017-08; SR-FINRA-2017-011; SR-GEMX-2017-17; SR-IEX-2017-16; SR-ISE-2017-45; SR-MIAX-2017-18; SR-MRX-2017-04; SR-NASDAQ-2017-046; SR-NYSE-2017-22; SR-NYSEArca-2017-52; SR-NYSEMKT-2017-26; SR-PEARL-2017-20; SR-PHLX-2017-37)

June 30, 2017

Self-Regulatory Organizations; Bats BYX Exchange, Inc; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; Investors' Exchange LLC; Miami International Securities Exchange, LLC; MIAX PEARL LLC; NASDAQ BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; Nasdaq MRX, LLC; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Arca, Inc. and NYSE MKT LLC; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Establish Fees for Industry Members to Fund the Consolidated Audit Trail

I. Introduction

On May 1, 2017,¹ May 2, 2017,² May 3, 2017,³ May 8, 2017,⁴ May 9, 2017,⁵ May 10, 2017,⁶ May 12, 2017,⁷ May 15, 2017,⁸ May 16, 2017,⁹ and May 23, 2017,¹⁰ Bats BYX

¹ Miami International Securities Exchange, LLC and MIAX PEARL LLC filed their proposed rule changes on May 1, 2017.

² The NASDAQ Stock Market LLC and NASDAQ BX, Inc. filed their proposed rule changes on May 2, 2017.

³ Chicago Stock Exchange, Inc. filed its proposed rule change on May 3, 2017.

⁴ Financial Industry Regulatory Authority, Inc. filed its proposed rule change on May 8, 2017.

⁵ Investors' Exchange LLC originally filed its proposed rule change on May 3, 2017 under File No. SR-IEX-2017-13, and subsequently withdrew that filing and filed this proposed rule change on May 9, 2017.

⁶ The New York Stock Exchange LLC, NYSE Arca, Inc. and NYSE MKT LLC filed their proposed rule changes on May 10, 2017.

⁷ NASDAQ GEMX LLC, NASDAQ ISE, LLC, NASDAQ MRX, LLC and NASDAQ PHLX LLC originally filed their proposed rule changes on May 3, 2017 under File Nos.

Exchange, Inc. (“Bats BYX”), Bats BZX Exchange, Inc. (“Bats BZX”), Bats EDGA Exchange, Inc. (“Bats EDGA”), Bats EDGX Exchange, Inc. (“Bats EDGX”), BOX Options Exchange LLC (“BOX”), C2 Options Exchange, Incorporated (“C2”), Chicago Board Options Exchange, Incorporated (“CBOE”), Chicago Stock Exchange, Inc. (“CHX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), Investors’ Exchange LLC (“IEX”), Nasdaq ISE, LLC (“ISE”), Miami International Securities Exchange, LLC (“MIAX”), MIAX PEARL, LLC (“PEARL”), NASDAQ BX, Inc. (“BX”), Nasdaq GEMX, LLC (“GEMX”), Nasdaq MRX, LLC (“MRX”), NASDAQ PHLX LLC (“Phlx”), The Nasdaq Stock Market LLC (“Nasdaq”), New York Stock Exchange LLC (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”) and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Participants”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹¹ and Rule 19b-4 thereunder,¹² proposed rule changes to adopt fees to be charged to Industry

SR-GEMX-2017-11, SR-ISE-2017-40, SR-MRX-2017-03, and SR-PHLX-2017-35, and subsequently withdrew those filings and filed these proposed rule changes on May 12, 2017.

⁸ BOX Options Exchange LLC originally filed its proposed rule change on May 11, 2017 under File No. SR-BOX-2017-15, and subsequently withdrew that filing and filed this proposed rule change on May 15, 2017.

⁹ Bats BYX Exchange, Inc., C2 Options Exchange, Incorporated and Chicago Board Options Exchange, Incorporated filed their proposed rule changes on May 16, 2017. Bats EDGA Exchange, Inc. originally filed its proposed rule change on May 5, 2017 under File No. SR-BatsEDGA-2017-11, and subsequently withdrew that filing on May 11, 2017 and filed this proposed rule change on May 16, 2017.

¹⁰ Bats BZX Exchange, Inc. filed its proposed rule changes on May 23, 2017. Bats EDGX Exchange, Inc. originally filed its proposed rule change on May 5, 2017 under File No. SR-BatsEDGX-2017-20, and subsequently withdrew that filing on May 10, 2017 and filed this proposed rule change on May 23, 2017.

¹¹ 15 U.S.C. 78s(b)(1).

¹² 17 CFR 240.19b-4.

Members¹³ to fund the consolidated audit trail (“CAT”).¹⁴ The proposed rule changes were immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.¹⁵ The proposed rule changes submitted by MIAX and PEARL were published for comment in the Federal Register on May 19, 2017.¹⁶ The proposed rule changes submitted by BX, CHX, IEX, Nasdaq, NYSE, NYSE Arca and NYSE MKT were published for comment in the Federal Register on May 22, 2017.¹⁷ The proposed rule change submitted by FINRA was published for comment in the Federal Register on May 23, 2017.¹⁸ The proposed rule changes submitted by BOX, GEMX, ISE, MRX and Phlx were published for comment in the Federal Register on May 24, 2017.¹⁹ The proposed rule changes submitted by C2, CBOE and Bats EDGA were published

¹³ Section 1.1 of the CAT NMS Plan defines “Industry Member” as “a member of a national securities exchange or a member of a national securities association.”

¹⁴ See infra notes 16-22.

¹⁵ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as “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.” 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ See Securities Exchange Act Release Nos. 80675 (May 15, 2017), 82 FR 23100 (May 19, 2017) (SR-MIAX-2017-18) (“Notice”); and 80676 (May 15, 2017), 82 FR 23083 (May 19, 2017) (SR-PEARL-2017-20).

¹⁷ Securities Exchange Act Release Nos. 80697 (May 16, 2017), 82 FR 23398 (May 22, 2017) (SR-BX-2017-023); 80691 (May 16, 2017), 82 FR 23344 (May 22, 2017) (SR-CHX-2017-08); 80692 (May 16, 2017), 82 FR 23325 (May 22, 2017) (SR-IEX-2017-16); 80696 (May 16, 2017), 82 FR 23439 (May 22, 2017) (SR-NASDAQ-2017-046); 80693 (May 16, 2017), 82 FR 23363 (May 22, 2017) (SR-NYSE-2017-22); 80698 (May 16, 2017), 82 FR 23457 (May 22, 2017) (SR-NYSEArca-2017-52); and 80694 (May 16, 2017), 82 FR 23416 (May 22, 2017) (SR-NYSEMKT-2017-26).

¹⁸ See Securities Exchange Act Release No. 80710 (May 17, 2017), 82 FR 23639 (May 23, 2017) (SR-FINRA-2017-011).

¹⁹ See Securities Exchange Act Release Nos. 80721 (May 18, 2017), 82 FR 23864 (May 24, 2017) (SR-BOX-2017-16); 80713 (May 18, 2017), 82 FR 23956 (May 24, 2017) (SR-GEMX-2017-17); 80715 (May 18, 2017), 82 FR 23895 (May 24, 2017) (SR-ISE-2017-

for comment in the Federal Register on June 1, 2017.²⁰ The proposed rule change submitted by Bats BYX was published for comment in the Federal Register on June 5, 2017.²¹ The proposed rule changes submitted by Bats BZX and Bats EDGX were published for comment in the Federal Register on June 6, 2017.²² The Commission has received a number of comment letters on the proposed rule changes, and a response to comments from the Participants.²³

45); 80726 (May 18, 2017), 82 FR 23915 (May 24, 2017) (SR-MRX-2017-04); and 80725 (May 18, 2017), 82 FR 23935 (May 24, 2017) (SR-PHLX-2017-37).

²⁰ Securities Exchange Act Release Nos. 80786 (May 26, 2017), 82 FR 25474 (June 1, 2017) (SR-C2-2017-017); 80785 (May 26, 2017), 82 FR 25404 (June 1, 2017) (SR-CBOE-2017-040); and 80784 (May 26, 2017), 82 FR 25448 (June 1, 2017) (SR-BatsEDGA-2017-13).

²¹ See Securities Exchange Act Release No. 80809 (May 30, 2017), 82 FR 25837 (June 5, 2017) (SR-BatsBYX-2017-11).

²² See Securities Exchange Act Release Nos. 80822 (May 31, 2017), 82 FR 26148 (June 6, 2017) (SR-BatsBZX-2017-38); and 80821 (May 31, 2017), 82 FR 26177 (June 6, 2017) (SR-BatsEDGX-2017-22).

²³ Since the proposed rule changes are designed to adopt fees to be charged to Industry Members to fund CAT, the Commission is considering all comments received regardless of the comment file to which they were submitted. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Brent J. Fields, Secretary, Commission (dated June 6, 2017) (“SIFMA Letter”), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>; Letter from Patricia L. Cerny and Steven O’Malley, Compliance Consultants, to Brent J. Fields, Secretary, Commission (dated June 12, 2017) (“Cerny & O’Malley Letter”), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1799253-153675.pdf>; Letter from Daniel Zinn, General Counsel, OTC Markets Group Inc., to Eduardo A. Aleman, Assistant Secretary, Commission (dated June 13, 2017) (“OTC Markets Letter”), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1801717-153703.pdf>; Letter from Joanna Mallers, Secretary, FIA Principal Traders Group, to Brent J. Fields, Secretary, Commission (dated June 22, 2017) (“FIA Letter”), available at: <https://www.sec.gov/comments/sr-cboe-2017-040/cboe2017040-1819670-154195.pdf>; Letter from Stuart J. Kaswell, Executive Vice President and Managing Director, General Counsel, Managed Funds Association, to Brent J. Fields, Secretary, Commission (dated June 23, 2017) (“MFA Letter”), available at: <https://www.sec.gov/comments/sr-finra-2017-011/finra2017011-1822454-154283.pdf>; and Letter from Suzanne H. Shatto, Investor, to Commission (dated June 27, 2017)

Pursuant to Section 19(b)(3)(C) of the Act, the Commission is hereby: (1) temporarily suspending the proposed rule changes; and (2) instituting proceedings to determine whether to approve or disapprove the proposals.

II. Summary of the Proposed Rule Change

Prior to filing the proposed rule changes, the Participants and NYSE National, Inc.²⁴ filed with the Commission, pursuant to Section 11A of the Exchange Act²⁵ and Rule 608 of Regulation NMS thereunder,²⁶ a national market system (“NMS”) plan to create, implement and maintain the CAT (the “CAT NMS Plan” or the “Plan”).²⁷ The Plan was published for comment in the Federal Register on May 17, 2016,²⁸ and approved by the Commission, as modified, on

(“Shatto Letter”), available at: <https://www.sec.gov/comments/sr-batsedgx-2017-22/batsedgx201722-154443.pdf>. The Commission also received a comment letter which is not pertinent to these proposed rule changes. See Letter from Christina Crouch, Smart Ltd., to Brent J. Fields, Secretary, Commission (dated June 5, 2017) (“Smart Letter”), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1785545-153152.htm>. The Commission also has received a letter from the Participants responding to the comments received. See Letter from CAT NMS Plan Participants to Brent J. Fields, Secretary, Commission (dated June 29, 2017) (“Response from Participants”), available at <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

²⁴ NYSE National, Inc. ceased trading on February 1, 2017. See Securities Exchange Act Release No. 80018 (February 10, 2017), 82 FR 10947 (February 16, 2017) (SR-NSX-2017-04). Therefore, it did not submit a proposed rule change to adopt fees on Industry Members to fund CAT.

²⁵ 15 U.S.C. 78k-1.

²⁶ 17 CFR 242.608.

²⁷ See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 23, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

²⁸ Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016) (“CAT NMS Plan Notice”).

November 15, 2016.²⁹ Under the CAT NMS Plan, the Operating Committee of a newly formed company – CAT NMS, LLC (the “Company”), of which each Participant is a member – has the discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants and Industry Members will pay (“CAT Fees”).³⁰

The Plan specified that, in establishing the funding of the Company, the Operating Committee shall establish “a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSS, are based upon the level of market share; (ii) Industry Members’ non-ATS activities are based upon message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).”³¹ Under the Plan, such fees are to be implemented in accordance with various funding principles, including an “allocation of the Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and

²⁹ Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (“Approval Order”).

³⁰ Section 11.1(b) of the CAT NMS Plan.

³¹ Section 11.2(c) of the CAT NMS Plan. See Article XI of the CAT NMS Plan for additional detail; see also, e.g., Notice, supra note 16, at 23102–04 for additional description of the CAT NMS Plan requirements.

operations” and the “avoid[ance of] any disincentives such as placing an inappropriate burden on competition and reduction in market quality.”³²

To establish CAT Fees, the Participants submitted the proposed rule changes. As noted above, the proposed rule changes adopt fees to be charged to Industry Members, including Industry Members that are Execution Venue ATSS, which are described below.³³ The Participants also submitted an amendment to the Plan on May 23, 2017³⁴ to establish the CAT Fees to be charged to themselves.³⁵

A. Industry Member Tiers

The proposed rule changes establish fixed fees to be payable by Industry Members, based on message traffic.³⁶ Under the proposed rule changes, each Industry Member (other than Execution Venue ATSS³⁷) will be ranked by message traffic and assigned to one of nine tiers that have been predefined by percentages (the “Industry Member Percentages”).³⁸ The Participants

³² See Section 11.2(b) and (e) of the CAT NMS Plan.

³³ For additional details regarding these fees, see, e.g., Notice, supra note 16.

³⁴ The Participants initially submitted the amendment on May 9, 2017, but subsequently withdrew the amendment and refiled the current submission on May 23, 2017.

³⁵ See Securities Exchange Act Release No. 80930 (June 14, 2017), 82 FR 28180 (June 20, 2017).

³⁶ The CAT NMS Plan provides that the CAT Fees payable by Industry Members shall include message traffic generated by: (i) an ATS that does not execute orders that is sponsored by an Industry Member and (ii) routing orders to and from any ATS sponsored by an Industry Member. See Section 11.3(b) of the CAT NMS Plan. The Participants noted, however, that Industry Member fees will not be applicable to an ATS that qualifies as an Execution Venue. See, e.g., Notice, supra note 16, at 23104.

³⁷ The Participants defined “Execution Venue ATSS” as alternative trading systems that execute transactions in Eligible Securities. See, e.g., Notice, supra note 16, at 23101.

³⁸ See, e.g., id. at 23104.

noted that the percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the “Industry Member Recovery Allocation”).³⁹

The following table sets forth the specific Industry Member Percentages and Industry Member Recovery Allocations:⁴⁰

Industry Member Tier	Percentage of Industry Members	Percentage of Industry Member Recovery	Percentage of Total Recovery
Tier 1	0.500%	8.50%	6.38%
Tier 2	2.500%	35.00%	26.25%
Tier 3	2.125%	21.25%	15.94%
Tier 4	4.625%	15.75%	11.81%
Tier 5	3.625%	7.75%	5.81%
Tier 6	4.000%	5.25%	3.94%
Tier 7	17.500%	4.50%	3.38%
Tier 8	20.125%	1.50%	1.13%
Tier 9	45.000%	0.50%	0.38%
Total	100%	100%	75%

The Participants explained that, prior to the start of CAT reporting, “message traffic” will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.⁴¹ The Participants stated that prior to the

³⁹ See, e.g., id.

⁴⁰ See, e.g., id. at 23105–06.

⁴¹ See, e.g., id. at 23106. The Commission approved exemptive relief allowing options market-maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the options market-maker. See Securities Exchange Act Release No. 77265 (March 1, 2017), 81 FR 11856 (March 7, 2016). The Participants stated that this exemption applies to options market-maker quotes for CAT reporting purposes only. Therefore, the

start of CAT reporting, (1) orders will be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, as well as order routes and executions originated by a member of FINRA, (2) cancels will be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, and (3) quotes will be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.⁴² After an Industry Member begins reporting to the CAT, the Participants noted that “message traffic” will be calculated based on the Industry Member’s Reportable Events.⁴³

B. Execution Venue Tiers

For purposes of determining the CAT Fees for ATSS, the Participants categorized ATSS (excluding ATSS that do not execute orders) as Execution Venues.⁴⁴ Furthermore, the proposed rule changes set different tiers for Equity and Options Execution Venues.

1. NMS Stocks and OTC Equity Securities

Participants indicated that options market-maker quotes will be included in the calculation of total message traffic for options market-maker under their proposed rule changes. See, e.g., Notice, supra note 16, at 23106 n.36.

⁴² See, e.g., id. at 23106.

⁴³ See, e.g., id. If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT reporting, or no Reportable Events after CAT reporting commences, the Participants stated that the Industry Member would not have a CAT Fee obligation. See, e.g., id. at n. 38.

⁴⁴ See, e.g., id. at 23106. Section 1.1 of the CAT NMS Plan defines “Execution Venue” as “a Participant or an [ATS] (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).”

The proposed rule changes establish fixed fees to be paid by Execution Venues depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities. Market share for Execution Venues will be calculated by share volume, except the market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, excluding the share volume reported to such national securities association by an Execution Venue.⁴⁵

Under the proposed rule changes, each Equity Execution Venue will be ranked by market share and assigned to one of two tiers that have been predefined by percentages (the “Equity Execution Venue Percentages”).⁴⁶ The Participants noted that the percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the “Equity Execution Venue Recovery Allocation”).⁴⁷

The following table sets forth the specific Equity Execution Venue Percentages and Equity Execution Recovery Allocations.⁴⁸

⁴⁵ Section 11.3(a)(i) of the CAT NMS Plan; see also, e.g., Notice, supra note 16, at 23106-07.

⁴⁶ See, e.g., Notice, supra note 16, at 23107.

⁴⁷ See, e.g., id.

⁴⁸ See, e.g., id.

Equity Execution Venue Tier	Percentage of Equity Execution Venues	Percentage of Execution Venue Recovery	Percentage of Total Recovery
Tier 1	25.00%	26.00%	6.50%
Tier 2	75.00%	49.00%	12.25%
Total	100%	75%	18.75%

2. Listed Options

The proposed rule changes establish fixed fees to be paid by Execution Venues depending on the Listed Options market share of that Execution Venue. Market share for Execution Venues will be calculated by contract volume.⁴⁹ Under the proposed rule changes, each Options Execution Venue will be ranked by market share and assigned to one of two tiers that have been predefined by percentages (the “Options Execution Venue Percentages”).⁵⁰ The Participants noted that the percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the “Options Execution Venue Recovery Allocation”).⁵¹

The following table sets forth the specific Options Execution Venue Percentages and Options Execution Venue Recovery Allocations:⁵²

⁴⁹ Section 11.3(a)(ii) of the CAT NMS Plan; see also, e.g., Notice, supra note 16, at 23108.

⁵⁰ See, e.g., Notice, supra note 16, at 23108.

⁵¹ See, e.g., id.

⁵² See, e.g., id.

Options Execution Venue Tier	Percentage of Options Execution Venues	Percentage of Execution Venue Recovery	Percentage of Total Recovery
Tier 1	75.00%	20.00%	5.00%
Tier 2	25.00%	5.00%	1.25%
Total	100%	25%	6.25%

3. Tier Assignments

The Participants stated that market share for Execution Venues will be sourced from data reported to the CAT System after the commencement of CAT reporting.⁵³ Prior to the commencement of CAT reporting, the Participants stated that market share for Execution Venues will be sourced from publicly-available market data, including data made publicly available by Bats and FINRA.⁵⁴

C. Allocation of Costs

In determining the cost allocation between Industry Members (other than Execution Venue ATs) and Execution Venues, the Participants stated that the Operating Committee decided that 75% of total costs recovered will be allocated to Industry Members (other than Execution Venue ATs) and 25% will be allocated to Execution Venues.⁵⁵ In determining the cost allocation between Equity Execution Venues and Options Execution Venues, the Participants stated that the Operating Committee further determined to allocate 75% of

⁵³ See, e.g., id.

⁵⁴ See, e.g., id.

⁵⁵ See, e.g., id. at 23109.

Execution Venue costs recovered to Equity Execution Venues and 25% to Options Execution Venues.⁵⁶

D. Fee Levels

The Participants explained that the sum of the CAT Fees is designed to recover the total costs of building and operating the CAT. They stated that the Operating Committee has estimated overall CAT costs – including development and operational costs, third-party support costs (including historic legal fees, consulting fees, and audit fees), insurance costs, and operational reserve costs – to be \$50,700,000 in total for the year beginning November 21, 2016.⁵⁷ The Participants stated that, based on the estimated costs and the calculations for the funding model, the Operating Committee determined to impose the following fees.

For Industry Members (other than Execution Venue ATSS):⁵⁸

Tier	Monthly CAT Fee	Quarterly CAT Fee	CAT Fees Paid Annually
1	\$33,668	\$101,004	\$404,016
2	\$27,051	\$81,153	\$324,612
3	\$19,239	\$57,717	\$230,868
4	\$6,655	\$19,965	\$79,860
5	\$4,163	\$12,489	\$49,956
6	\$2,560	\$7,680	\$30,720
7	\$501	\$1,503	\$6,012
8	\$145	\$435	\$1,740
9	\$22	\$66	\$264

For Equity Execution Venues:⁵⁹

⁵⁶ See, e.g., id.

⁵⁷ See, e.g., id. The Participants further noted that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing. See, e.g., id. at n.41.

⁵⁸ See, e.g., id. at 23110.

⁵⁹ See, e.g., id.

Tier	Monthly CAT Fee	Quarterly CAT Fee	CAT Fees Paid Annually
1	\$21,125	\$63,375	\$253,500
2	\$12,940	\$38,820	\$155,280

For Options Execution Venues:⁶⁰

Tier	Monthly CAT Fee	Quarterly CAT Fee	CAT Fees Paid Annually
1	\$19,205	\$57,615	\$230,460
2	\$13,204	\$39,612	\$158,448

E. Changes to Fee Levels and Tiers

The Participants noted that Section 11.3(d) of the CAT NMS Plan states that “[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate.”⁶¹ The Participants stated that, as part of such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary.⁶² In addition, the Participants asserted that such reviews would consider the estimated ongoing CAT costs and the level of the operating reserve, in order to adjust CAT Fees as appropriate.⁶³ The Participants further stated that any changes to the CAT Fees will be filed with the Commission pursuant to Section 19(b) of the Exchange Act and become effective in accordance with the requirements of Section 19(b).⁶⁴

⁶⁰ See, e.g., id.

⁶¹ See, e.g., id. at 23115.

⁶² See, e.g., id.

⁶³ See, e.g., id. The Participants further noted that any surplus of the Company’s revenues over its expenses will be included within the operational reserve to offset future fees.
See, e.g., id.

⁶⁴ See, e.g., id.

F. Initial and Periodic Tier Reassignments

Under the proposed rule changes, the Operating Committee will assign fee tiers every three months based on market share or message traffic, as applicable, from the prior three months.⁶⁵ For the initial tier assignments, the Participants stated that the Company will calculate the relevant tier for each CAT Reporter using the prior three months of data.⁶⁶ The Participants explained the Company will calculate subsequent tier assignments using the three months of data prior to the relevant tri-monthly date.⁶⁷ The Participants noted that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.⁶⁸ According to the Participants, a CAT Reporter's assigned tier will depend not only on its own message traffic or market share, but also on the message traffic or market share across all CAT Reporters.⁶⁹

G. Timing and Manner of Payment

The proposed rule changes state that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees, regardless of whether the Industry Member is a member of multiple Participants.⁷⁰ The proposed rule changes further state that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of

⁶⁵ See, e.g., id.

⁶⁶ See, e.g., id. The Participants indicated that such data will be comprised of historical equity and equity options orders, cancels, and quotes provided by the Participants over the previous three-month period. See, e.g., id.; see also notes 41-43 supra and accompanying text.

⁶⁷ See, e.g., Notice, supra note 16, at 23115.

⁶⁸ See, e.g., id.

⁶⁹ See, e.g., id.

⁷⁰ See, e.g., id. at 23116.

CAT Fees established by the Company in the manner prescribed by the Company.⁷¹ The proposed rule changes also state that each Industry Member shall pay its CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).⁷² If an Industry Member fails to pay any such fee when due, the proposed rule changes require such Industry Member to pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) the Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.⁷³

III. Summary of Comments

As noted above, the Commission received a number of comment letters on the proposed rule changes⁷⁴ objecting to the proposals.⁷⁵

⁷¹ See, e.g., id. The Participants acknowledged, however, that no exact fee collection system has yet been established. See, e.g., id. at 23117.

⁷² See, e.g., id.

⁷³ See, e.g., id.

⁷⁴ See supra note 23. In addition, SIFMA attaches its July 18, 2016 letter regarding the proposed CAT NMS Plan. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, to Brent J. Fields, Secretary, Commission (dated July 18, 2016), available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>. This letter advances many of the same arguments described below, as well as some additional arguments – namely, that: (1) any funding mechanism for the CAT should be centralized; (2) allocating costs to Industry Members based on message traffic may disadvantage market-makers and broker-dealers who provide liquidity, as compared to those who take liquidity; (3) the Participants should implement a user fee in connection with the use of the CAT for regulatory purposes; (4) the CAT NMS Plan does not distinguish between costs of the CAT associated with collection and processing of data reported by broker-dealers as opposed to costs of the CAT designed to support SRO regulatory uses (noting that allocating costs of the CAT based on message traffic or market share would result in broker-dealers subsidizing the costs of surveillance systems and functions paid for by the Participants through regulatory fees that they already charge their members); (5) the Participants must substantiate the need for a CAT Fee in addition to current regulatory fees; and (6) funding for the CAT system should come through cost

Necessity of the CAT

One commenter asks whether the CAT is a “worthwhile endeavor,”⁷⁶ arguing that the CAT is largely duplicative of existing electronic audit trails, and suggesting that the goals of the CAT can be accomplished at a fraction of the cost set forth in the filings.⁷⁷ The commenter also believes that the CAT is not justified in terms of costs and benefits and warns that any costs assessed to broker-dealers will ultimately be passed on to investors.⁷⁸ Similarly, another

savings realized by the Participants from the retirement of old audit trail systems. Id. at 12-19. The Participants responded to these previously-expressed concerns in their response letter. The Participants state that (1) the CAT fee filings will implement a centralized approach to billing through the provision to each Industry Member of one invoice per quarter for CAT fees, regardless of the number of SROs to which the Industry Member belongs (see Response from Participants, supra note 23, at 9); (2) their choice of a tiered, fixed fee funding model would limit disincentives to providing liquidity as compared to strictly variable or metered funding models (see id. at 10); (3) the CAT NMS Plan authorizes a usage fee, but that it is premature to establish it (see id. at 8-9); (4) data ingestion and processing are primary drivers of the CAT costs, and therefore they believe that data processing is a reasonable basis for assessing CAT Fees (see id. at 8); (5) Rule 613 of Regulation NMS specifically contemplates broker-dealers contributing to the funding of the CAT and the Commission permitted the Participants to recover at least some of the CAT costs from their members (see id. at 3-4); and (6) the Participants have filed proposed rule changes to retire duplicative systems as required by the CAT NMS Plan and that once the Participants become more familiar with the CAT and have revised their surveillance methods, they will review their fees and determine whether to revise such fees (see id. at 9-10, 12).

⁷⁵ See SIFMA Letter; Cerny & O’Malley Letter; OTC Markets Letter; FIA Letter; MFA Letter; Shatto Letter, supra note 23. The Commission notes that the Shatto Letter agrees with the views expressed in SIFMA’s letter and that the Smart Letter discusses concerns that are not pertinent to the proposed rule changes. Accordingly, those two letters are not further discussed in this section.

⁷⁶ See FIA Letter, supra note 23, at 2.

⁷⁷ See id. See also Cerny & O’Malley Letter, supra note 23, at 4 (suggesting that the CAT will not capture any new violative activity not currently disclosed under current surveillance practices).

⁷⁸ See FIA Letter, supra note 23, at 2.

commenter believes that fees imposed on broker-dealers are likely to be passed through to investors, effectively limiting investor choice in execution venues.⁷⁹

In response to the comment questioning the utility of the CAT, the Participants explain that they are obligated to build the CAT by Rule 613.⁸⁰ Further, the Participants state that the CAT NMS Plan requires them to eliminate existing systems and rules made duplicative by the CAT and that they have already filed proposals to accomplish this for certain such systems and rules.⁸¹ The Participants add that the CAT is intended to replace the current audit trails (which vary in data and scope, among other ways) with a single, comprehensive audit trail.⁸²

Funding Authority

One commenter challenges the imposition of a CAT Fee on Industry Members, arguing that the Participants have not provided justification for imposing such a fee and that the Industry Members should not be obligated to pay any costs or expenses other than the direct costs to build and operate the CAT.⁸³ Two commenters note that broker-dealers already pay the Participants a significant amount in regulatory funding, and argue that costs other than the direct costs to build and operate the CAT (such as insurance and consulting) should be borne by the Participants as

⁷⁹ See MFA Letter, supra note 23, at 2.

⁸⁰ See Response from Participants, supra note 23, at 17.

⁸¹ See id. at 18. As an example of such a filing, the Participants cite to Securities Exchange Act Release No. 80783 (May 26, 2017), 82 FR 25423 (June 1, 2017) (SR-FINRA-2017-013), wherein FINRA proposes to eliminate the Order Audit Trail System. See Response from Participants, supra note 23, at 18 n.103.

⁸² See Response from Participants, supra note 23, at 18.

⁸³ See SIFMA Letter, supra note 23, at 2-4.

the costs they incur to do business as self-regulatory organizations, as well as any costs incurred before the approval of the CAT NMS Plan.⁸⁴

In their response, the Participants state that Rule 613 of Regulation NMS (“Rule 613”)⁸⁵ contemplates broker-dealers contributing to the funding of CAT.⁸⁶ Because the CAT improves regulatory oversight of the securities markets, the Participants believe that it would be equitable to require broker-dealers and Participants to fund the CAT.⁸⁷ The Participants further believe that Rule 613 and the Approval Order⁸⁸ support their recovery of costs related to the creation, implementation and maintenance of the CAT NMS Plan, such as third-party support costs, the operational reserve and insurance costs, through the CAT Fee.⁸⁹

Industry Member Input

Three commenters argue that the funding decisions would have benefited from greater involvement from Industry Members.⁹⁰ Two commenters assert that the Participants’ development of the funding model should have involved collaboration with the broker-dealer community.⁹¹ One commenter opines that if broker-dealers had been involved in the development of the funding model, such participation would have been helpful in understanding

⁸⁴ See FIA Letter, supra note 23, at 2-3; see also SIFMA Letter, supra note 23, at 3-4.

⁸⁵ 17 CFR 242.613.

⁸⁶ See Response from Participants, supra note 23, at 3.

⁸⁷ See id. at 4.

⁸⁸ See supra note 29.

⁸⁹ See Response from Participants, supra note 23, at 7-8.

⁹⁰ See SIFMA Letter; FIA Letter; MFA Letter, supra note 23.

⁹¹ See SIFMA Letter, supra note 23, at 2-3; see FIA Letter, supra note 23, at 2 (stating “we struggle to understand how excluding other market participants and taking input only from the Plan Participants is anything but prejudicial”).

why market participants are subject to CAT fees and the rationale for the proposed fee structure.⁹² Another commenter believes that the proposed fees lack substantive input from the Industry Members.⁹³ The third commenter recommends that the CAT NMS Plan Operating Committee include market participant representatives with respect to funding and data security, to enhance transparency and mitigate potential conflicts of interest.⁹⁴

In response to the comment that the funding model should have been the result of greater industry collaboration, the Participants assert that market participants were given the opportunity to comment on the funding model through the CAT NMS Plan Notice⁹⁵ and that, in developing the funding model, the Participants considered the input of members of the industry through the “Development Advisory Group” that was formed to provide industry feedback on the development of the CAT NMS Plan.⁹⁶ Further, the Participants assert that the proposed fees provide the opportunity for public comment on the fees.⁹⁷

Conflicts of Interest

Three commenters raise concerns about Participant conflicts of interest in setting the CAT fees.⁹⁸ One commenter argues that, through the proposals, the Participants are imposing unreasonable fees on their competitors, the Industry Members, who, as members of the

⁹² See FIA Letter, supra note 23, at 2.

⁹³ See SIFMA Letter, supra note 23, at 2-3.

⁹⁴ See MFA Letter, supra note 23, at 2.

⁹⁵ See supra note 28.

⁹⁶ See Response from Participants, supra note 23, at 2-3.

⁹⁷ See id. at 2.

⁹⁸ See SIFMA Letter, FIA Letter, MFA Letter, supra note 23.

Participants, have no recourse but to pay the fees or risk regulatory action.⁹⁹ This commenter states that 88% of the total costs of building and operating the CAT are allocated to broker-dealers and ATSS under the proposed fees, suggesting the Participants decided to allocate nearly all of the costs of CAT to their competitors.¹⁰⁰ Accordingly, the commenter recommends that an independent third party should have established the proposed CAT Fees to prevent the Participants from setting fees to their benefit.¹⁰¹

Another commenter argues that the Participants have a clear conflict of interest when setting their own cost allocation.¹⁰² This commenter states that the not-for-profit structure of the Company is essential to the CAT NMS Plan, seeks assurance that the Company has filed for business league status and, if so, asks whether the application has been approved.¹⁰³ The third commenter believes the process to establish the CAT fees does not address the Participants' potential conflicts of interest related to their commercial interests.¹⁰⁴

In their response, the Participants explain that it is unnecessary to require an independent third party to establish the CAT Fees, in part because the funding of the CAT is designed to protect against any conflicts of interest in the Participants' ability to set fees, through the operation of the CAT on a break-even basis (such that any fees collected would be used toward

⁹⁹ See SIFMA Letter, supra note 23, at 2-3.

¹⁰⁰ See id. at 2-3.

¹⁰¹ See id.

¹⁰² See FIA Letter, supra note 23, at 2.

¹⁰³ See id. at 3. This commenter raises concerns about the impact on the costs and allocations if the Company's application to become a business league is not approved by the Internal Revenue Service ("IRS"). Id.

¹⁰⁴ See MFA Letter, supra note 23, at 2.

CAT costs and an appropriate reserve, and that surpluses would offset fees in future payment).¹⁰⁵ The Participants also refer to the application of the Company to be organized as a tax-exempt business league, which would require that no part of the Company's net earnings can inure to the benefit of the Participants and that the Company is not organized for profit.¹⁰⁶ Additionally, the Participants note that the obligation to create, develop and maintain the CAT is their own responsibility, so they must have the ability to establish reliable funding and not an independent third party.¹⁰⁷

In response to the comment asking about the status of the Company's application to be organized as a tax-exempt business league, the Participants state that the Company filed its IRS application on May 5, 2017, and that the application is currently pending. The Participants explain that if the IRS does not approve the application, the Company will operate as set forth in the Plan, but may be required to pay taxes. They believe that it is premature to include a tax contingency plan in the proposals.¹⁰⁸

Allocation of Fees

Several commenters raise concerns about the proposed allocation of CAT fees.¹⁰⁹ One commenter argues that the proposals are not an equitable allocation of reasonable fees under Section 6(b)(4) or Section 15A(b)(5) of the Exchange Act.¹¹⁰ This commenter notes that the proposed fees allocate approximately 88% of the total costs of building and operating the CAT to

¹⁰⁵ See Response from Participants, supra note 23, at 11.

¹⁰⁶ See id.

¹⁰⁷ See id. at 11-12.

¹⁰⁸ See id. at 11, 18.

¹⁰⁹ See SIFMA Letter; Cerny & O'Malley Letter, FIA Letter; MFA Letter, supra note 23.

¹¹⁰ See SIFMA Letter, supra note 23, at 3.

broker-dealers and ATSS¹¹¹ and questions the “comparability” justification provided by the Participants for allocating 75% of the total CAT costs to Industry Members, stating that the proposed fees are not comparable at the highest tiers.¹¹² Similarly, another commenter opines that the 75%/25% allocation of the CAT costs is inequitable, explaining that the Participants will be able to realize cost savings from the retirement of regulatory reporting processes.¹¹³ A third commenter notes that it is unable to understand the justification for the 75% allocation to broker-dealers,¹¹⁴ and the fourth commenter believes that the Participants are disproportionately imposing fees on Industry Members, which could put Industry Members at a competitive disadvantage.¹¹⁵

In response to comments regarding the allocation of CAT costs, the Participants first state that the 88% figure cited in the first commenter’s letter is the cost broker-dealers will incur directly to comply with the reporting requirements of the CAT, not the CAT Fees.¹¹⁶ The Participants also note that this is an aggregate number and reflects the fact that there are 75 times more Industry Members that would report to the CAT than Participants.¹¹⁷

In addition, the Participants explain that the Operating Committee believed that the 75%/25% division of total CAT costs between Industry Members and Execution Venues maintained the greatest level of comparability, considering affiliations among or between CAT

¹¹¹ See id. at 3 n.4.

¹¹² See id. at 3.

¹¹³ See Cerny & O’Malley Letter, supra note 23, at 2.

¹¹⁴ See FIA Letter, supra note 23, at 3.

¹¹⁵ See MFA Letter, supra note 23, at 2.

¹¹⁶ See Response from Participants, supra note 23, at 5.

¹¹⁷ See id.

Reporters.¹¹⁸ The Participants state that although the Tier 1 and 2 fees for Industry Members would be higher than those for Execution Venues, the fees paid by Execution Venue complexes would be higher than those paid by Industry Member complexes.¹¹⁹ The Participants also note that the cost allocation takes into account that there are approximately 24 times more Industry Members that would report to the CAT than Execution Venues.¹²⁰

Tiering Methodology

Two commenters believe that the proposed tiering methodology is inequitable and unreasonable.¹²¹ Both commenters raise concerns that the tiers will be applied inequitably because Industry Members will be assessed fees based on their message traffic (the biggest cost component of the CAT), while Participants will be assessed fees on their market share.¹²² One of the commenters notes that, although the Participants proposed nine tiers for Industry Members, they have only proposed two tiers for Execution Venues,¹²³ “claiming that additional tiers would have resulted in significantly higher fees for Tier 1 [E]xecution [V]enues and diminish

¹¹⁸ See id. at 15.

¹¹⁹ See id. The Participants note that “the proposed funding model estimates total fees for associated Participant complexes that are in several cases nearly two to three times larger than the single largest broker-dealer complex.” See id. at 6.

¹²⁰ See id. at 15. The Commission notes that the Notice stated that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues. See Notice, supra note 16, at 23109.

¹²¹ See SIFMA Letter; FIA Letter, supra note 23.

¹²² See FIA Letter, supra note 23, at 3; SIFMA Letter, supra note 23, at 4 (stating “the Plan Participants proposals inexplicably propose a tiering mechanism for themselves that is based on not their relative impact to the CAT system, but instead on their relative market share”).

¹²³ See SIFMA Letter, supra note 23, at 4.

comparability between [E]xecution [V]enues and Industry Members.”¹²⁴ Both commenters believe the result will “maximize costs for broker-dealers and minimize costs for Plan Participants.”¹²⁵ One of the commenters also questions why it makes sense to charge a fixed fee for all market participants within a single tier, and whether the fixed-fee tiers set forth therein could create incentives for market participants to limit their quoting and trading activities as their trading volumes approach higher tiers.¹²⁶

In response to the comments that the tiering methodology is inequitable and unreasonable because Participants will be assessed fees based on market share, rather than message traffic, the Participants explain that charging broker-dealers based on message traffic is the most equitable means to establish their fees because message traffic is a significant cost driver of CAT. Accordingly, the Participants believe that it is appropriate to use message traffic to assign fee tiers to broker-dealers.¹²⁷ The Participants state that charging Execution Venues based on message traffic, on the other hand, will result in large and small Execution Venues paying comparable fees as both types of Execution Venues produce similar amounts of message traffic.¹²⁸ The Participants believe such a result would be inequitable; therefore, they decided to base fees for Execution Venues and broker-dealers on different criteria.¹²⁹

¹²⁴ See id.

¹²⁵ See FIA Letter, supra note 23, at 3; see also SIFMA Letter, supra note 23, at 4.

¹²⁶ See FIA Letter, supra note 23, at 3.

¹²⁷ See Response from Participants, supra note 23, at 6.

¹²⁸ See id. at 6.

¹²⁹ See id. The Participants also explain that, while ATs have varying levels of message traffic, they operate similarly to exchanges and therefore were categorized as Execution Venues. See id. at 6-7.

In response to a commenter’s concern that the Participants only established two tiers for themselves, the Participants state that the CAT NMS Plan permits them to establish only two tiers and that two tiers were sufficient to distinguish between the Execution Venues.¹³⁰ The Participants state that adding more tiers will significantly increase fees for Tier 1 and Tier 2 Execution Venues with the result of fees for Tier 1 Execution Venues being much higher than fees for Tier 1 Industry Members.¹³¹ In turn, the Participants believe that such a result will violate Section 11.2(c) of the CAT NMS Plan, which states that, in establishing the funding of the Company, the Operating Committee shall seek to establish a tiered fee structure in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members).¹³²

In response to the comment asking why it makes sense to charge a fixed fee for all market participants within a single tier and questioning the results of fixed-fee tiering, the Participants explain that the proposed approach “helps ensure that fees are equitably allocated among similarly situated CAT Reporters, thereby lessening the impact of CAT fees on smaller firms,”¹³³ and provides predictability of payment obligations.¹³⁴ The Participants also state that

¹³⁰ See id. at 13. The Participants also state that, unlike for Industry Members, the data for Execution Venues “did not suggest a break point(s) for the markets with less than 1% market share that would indicate an appropriate threshold for creating a new tier or tiers.” Id.

¹³¹ See id. at 14.

¹³² See id.; Section 11.2(c) of the CAT NMS Plan.

¹³³ See Response from Participants, supra note 23, at 14.

¹³⁴ See id.

the fixed-fee approach provides elasticity to take into account any changes in message traffic levels through the use of predefined fixed percentages instead of fixed volume thresholds, and would not likely cause CAT Reporters to change their behavior (and impact liquidity) to avoid being placed in a higher tier.¹³⁵

Options Market-Maker Fees

One commenter believes that the proposed fees will be unsustainable for small options market-makers.¹³⁶ The commenter explains that because the nature of their business requires the generation of quotes, the proposed assessment of fees based on message traffic will place small options market-makers in the top Industry Member fee tiers, “[a]lthough this category of broker-dealer is relatively small in terms of net worth”¹³⁷ The commenter notes that the top three tier fees for Industry Members are comparable to the largest equity Execution Venues, which it states is neither equitable nor fair.¹³⁸ The commenter also believes that smaller broker-dealers, such as options market-makers and other electronic trading firms, will be in the top fee tiers, while larger “full-service” firms that produce fewer electronic messages would be in the lower fee tiers.¹³⁹ The commenter argues that this result is not equitable or fair to smaller market participants.¹⁴⁰

¹³⁵ See id.

¹³⁶ See Cerny & O’Malley Letter, supra note 23, at 1. The commenter notes that options market-makers have an obligation to quote “hundreds of thousands of options series” and that this fact was acknowledged by the Commission, which exempted them from submitting their quotes to the Central Repository. See id. at 3; see also note 41 supra.

¹³⁷ See Cerny & O’Malley Letter, supra note 23, at 1.

¹³⁸ See id. at 3.

¹³⁹ See id. at 4.

¹⁴⁰ See id.

Additionally, the commenter believes that charging Industry Members on the basis of message traffic will disproportionately impact options market-makers because, unlike for equities, message traffic would include options strikes and series.¹⁴¹ Further, the commenter notes that options market-makers have continuous quoting obligations imposed by the exchanges, and consequently, expected increases in the options classes listed by the exchanges will increase CAT fees for options market-makers.¹⁴² The commenter adds that the proposed fees may impact the ability of small options market-makers to provide liquidity and that such Industry Members may choose to leave the market-making business in order to avoid quoting requirements.¹⁴³

In their response, the Participants explain that since message traffic is a major cost component for CAT, they believe it is an appropriate basis for assigning Industry Member fee tiers.¹⁴⁴ The Participants note that options market-makers will produce a large amount of message traffic to be processed by the CAT, so the Participants intend to charge them CAT fees.¹⁴⁵

ATS Fees

One commenter objects to the proposed fees for ATSS, which are the same fees as Participants under the proposals, as unreasonable, because it believes the fees would result a

¹⁴¹ See id. at 2.

¹⁴² See id. at 3.

¹⁴³ See id. at 3, 4, 5.

¹⁴⁴ See Response from Participants, supra note 23, at 6, 17.

¹⁴⁵ See id. at 17 n.96; see also note 41, supra.

significant burden on small ATSS and a barrier to entry for new ATSS that would not similarly apply to the Participants.¹⁴⁶

Another commenter objects to the proposals' treatment of smaller Equity Execution Venues (such as low volume ATSS), opining that such treatment is unfair and anti-competitive.¹⁴⁷ The commenter also argues that smaller Execution Venues that were assigned to the second fee tier would be required to pay two-thirds of the fees allocated to "the enormous NYSE or Nasdaq exchanges."¹⁴⁸ This commenter suggests adding at least one tier for small ATSS executing in the aggregate less than 1% of NMS stocks (based on trade volume), as well as for ATSS executing OTC Equity securities, and allocating approximately 1.5% of the total costs assigned to all Execution Venues to that tier.¹⁴⁹

In response to the comment noting that charging ATSS the same CAT fees as Execution Venues would result in a significant burden on smaller ATSS and act as a barrier to entry, the Participants reiterate that two fee tiers for Execution Venues were appropriate because adding tiers would "compromise the comparability of fees between Execution Venues and Industry Members with the most CAT-related activity. . . . [C]reating additional tiers could have unintended consequences on the funding model such as creating greater discrepancies between the tiers."¹⁵⁰ The Participants also explain that they decided to treat Execution Venues and ATSS

¹⁴⁶ See SIFMA Letter, supra note 23, at 4. SIFMA states that Tier 2 Execution Venues will produce significantly more reports to CAT than Tier 2 ATSS, but points out that Tier 2 Execution Venues and Tier 2 ATSS will be subject to the same CAT Fees. See id.

¹⁴⁷ See OTC Markets Letter, supra note 23, at 1–2.

¹⁴⁸ See id. at 9.

¹⁴⁹ See id.

¹⁵⁰ See Response from Participants, supra note 23, at 16.

in the same way because of the similarities of their business models and estimated burden on CAT.¹⁵¹

In response to the comment recommending the addition of a tier for small ATSS executing in the aggregate less than 1% of NMS stocks, the Participants explain that two fee tiers for Execution Venues were appropriate because adding tiers would “compromise the comparability of fees between Execution Venues and Industry Members with the most CAT-related activity.”¹⁵² The Participants also state that they considered adding more than two tiers of Execution Venue fees, but that doing so would result greatly increase the fees imposed on Tier 1 Equity Execution Venues and “diminish comparability between Execution Venues and Industry Members in a manner that would be difficult to justify under the funding model.”¹⁵³

OTC Equity Securities Execution Venues

One commenter objects to the proposals’ treatment of Execution Venues for OTC Equity securities, opining that it is unfair and anti-competitive.¹⁵⁴ The commenter particularly objects to the assignment of OTC Link ATS to the first fee tier of Execution Venues with large Execution Venues for NMS Stocks.¹⁵⁵ The commenter states that OTC Link ATS was placed in the first CAT fee tier because fee tier assignments are inappropriately based on market share calculated from share volume.¹⁵⁶ The commenter states that the number of trades in OTC Equity Securities

¹⁵¹ See id. at 6-7.

¹⁵² See id. at 16.

¹⁵³ See id.

¹⁵⁴ See OTC Markets Letter, supra note 23, at 1–2.

¹⁵⁵ See id. at 1, 3, 5.

¹⁵⁶ See id. at 6–8. The commenter states that “[s]hare volume is an inappropriate method for determining market share, because the costs of operating the CAT are not correlated with

is relatively small,¹⁵⁷ as opposed to share volume “due to the disproportionately large number of shares being traded on the OTC equity market as compared to the NMS market”¹⁵⁸ The commenter explains that many OTC Equity Securities are priced at less than one dollar – and a significant number at less than one penny – and that low-priced shares tend to trade in larger quantities.¹⁵⁹ Because the fee tiers are based on market share calculated from share volume, the commenter points out that OTC Link ATS has the greatest market share of all of the Execution Venues in both NMS Stocks and OTC Equity Securities at 29.90% and accordingly was assigned to the same fee tier as exchanges that the commenter claims have approximately 20 times greater trading revenues than OTC Link ATS.¹⁶⁰ The commenter believes that this unfairly burdens the market for OTC Equity Securities.¹⁶¹ The commenter recommends placing Execution Venues for OTC Equity Securities in separate tiers from large Execution Venues for NMS Stocks and allocating costs to tiers based on number of trades to align tiers with CAT usage and costs.¹⁶² Specifically, the commenter believes that there should be separate tiers for the Execution Venues for OTC Equity Securities with approximately 0.5% of the total costs assigned to all Execution Venues allocated to that tier, or at least one additional tier for small ATSs executing in the

the number of shares traded in any particular Execution Venue. Instead, CAT’s costs are impacted by the number of orders and executions.” See id. at 6. The commenter recommends using the number of trades in lieu of share volume, or dollar volume instead of share volume, for determining market share. See id. at 7–8.

¹⁵⁷ See id. at 4.

¹⁵⁸ See id. at 7.

¹⁵⁹ See id.

¹⁶⁰ See id. at 3.

¹⁶¹ See id.

¹⁶² See id. at 8.

aggregate less than 1% of NMS stocks (based on trade volume) and OTC Equity securities with approximately 1.5% of the total costs assigned to all Execution Venues allocated to that tier.¹⁶³

In their response, the Participants state that the CAT NMS Plan provides for the use of share volume to calculate market share for Execution Venues that execute transactions in NMS Stocks or OTC Equity Securities.¹⁶⁴ The Participants explain that two fee tiers for Execution Venues were appropriate because adding tiers would “compromise the comparability of fees between Execution Venues and Industry Members with the most CAT-related activity”¹⁶⁵ and that they considered adding more than two tiers of Execution Venue fees, but that doing so would result greatly increase the fees imposed on Tier 1 Equity Execution Venues and “diminish comparability between Execution Venues and Industry Members in a manner that would be difficult to justify under the funding model.”¹⁶⁶ The Participants believe that the CAT Fees do not impose an unnecessary or inappropriate burden on competition on OTC Equity Securities Execution Venues in light of the potential negative impact of increasing the number of fee tiers applicable to Execution Venues and the decision to use market share, as calculated by share volume, as the basis for Execution Venue CAT Fees.¹⁶⁷

IV. Suspension of the Proposed Rule Changes

Pursuant to Section 19(b)(3)(C) of the Act,¹⁶⁸ at any time within 60 days of the date of filing of an immediately effective proposed rule change in accordance with Section 19(b)(1) of

¹⁶³ See id. at 9.

¹⁶⁴ See Response from Participants, supra note 23, at 16.

¹⁶⁵ See id.

¹⁶⁶ See id.

¹⁶⁷ See id.

¹⁶⁸ 15 U.S.C. 78s(b)(3)(C).

the Act,¹⁶⁹ the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization made thereby 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. The Commission believes a temporary suspension of the proposed rule changes is warranted here.¹⁷⁰

In particular, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes to consider whether the proposed rule changes satisfy the standards under the Act and the rules thereunder requiring, among other things, that the rules of an exchange or a national securities association provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; promote just and equitable principles of trade; protect investors and the public interest; do not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹⁷¹

The proposed rule changes are subject to Section 6 of the Act in the case of the national securities exchanges and Section 15A of the Act in the case of the national securities association, including: (1) Section 6(b)(4)¹⁷² and Section 15A(b)(5),¹⁷³ which require the rules of an

¹⁶⁹ 15 U.S.C. 78s(b)(1).

¹⁷⁰ For purposes of temporarily suspending the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷¹ See 15 U.S.C. 78f(b)(4), (5), and (8); 15 U.S.C. 78o-3(b)(5), (6), and (9).

¹⁷² 15 U.S.C. 78f(b)(4).

¹⁷³ 15 U.S.C. 78o-3(b)(5).

exchange or a national securities association to “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;”¹⁷⁴ (2) Section 6(b)(5) and Section 15A(b)(6), which require the rules of an exchange or a national securities association to, among other things, “promote just and equitable principles of trade . . . protect investors and the public interest; and [to be] not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;”¹⁷⁵ and (3) Section 6(b)(8) and Section 15A(b)(9), which require the rules of an exchange or a national securities association to “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter.”¹⁷⁶

In temporarily suspending the proposed rule changes, the Commission intends to consider whether, among other things, the following aspects of the proposed rule changes are consistent with the Act:

- The allocation of 75% of total costs recovered to Industry Members (other than Execution Venue ATSS) and 25% to Execution Venues, and the comparability of fees between the largest Industry Members and Tier 1 Execution Venues. The Participants stated that this 75%/25% division maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters.¹⁷⁷ The

¹⁷⁴ 15 U.S.C. 78f(b)(4).

¹⁷⁵ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78o-3(b)(6).

¹⁷⁶ 15 U.S.C. 78f(b)(8); 15 U.S.C. 78o-3(b)(9).

¹⁷⁷ See, e.g., Notice, *supra* note 16, at 23109. The CAT NMS Plan funding principles state that, in establishing the funding of the Company, the Operating Committee shall seek to establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are

Participants explained that the cost allocation establishes fees for the largest Industry Members that are comparable to the largest Equity Execution Venues and Options Execution Venues.¹⁷⁸ In addition, they stated that the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes.¹⁷⁹ Furthermore, the Participants noted that the allocation of total CAT costs recovered recognizes that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues.¹⁸⁰

- The determination to rely on market share, as calculated by share volume in NMS Stocks and OTC Equity Securities, to place Equity Execution Venues for OTC Equity Securities and Execution Venues representing less than 1% NMS market share (primarily lower volume ATSS) in the same fee tier structure as Equity Execution Venues for NMS Stocks, as well as the determination to set two fee tiers and charge Equity Execution Venues in Tier 2 approximately two-thirds of the fees allocated to Equity Execution Venues in Tier 1. The CAT NMS Plan

Execution Venues, including ATSS, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; and (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). See Section 11.2(c) of the CAT NMS Plan.

¹⁷⁸ See, e.g., Notice, supra note 16, at 23109.

¹⁷⁹ See id. The Participants also represented that other possible allocations of CAT costs led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa and/or much higher fees for Industry Member complexes than for Execution Venue complexes or vice versa. See id.

¹⁸⁰ See id.

permits the Operating Committee to establish at least two and no more than five tiers of fixed fees for Equity Execution Venues.¹⁸¹ The Participants explained that the Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers, because they believed that two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share.¹⁸² The Participants added that the incorporation of additional Equity Execution Venue tiers will result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.¹⁸³ The Participants stated that the Operating Committee considered the distribution of Execution Venues, grouped together Execution Venues with similar levels of market share of share volume, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue fee tiers to distinguish between Execution Venues.¹⁸⁴

- The inclusion of options market-maker quotes in message traffic for purposes of calculating the appropriate fee tier for Industry Members. The Participants stated that, under the proposals, each Industry Member will be placed into one of nine tiers of fixed fees, based on message traffic for a defined period.¹⁸⁵ Further, the

¹⁸¹ See Section 11.3(a)(i) of the CAT NMS Plan.

¹⁸² See, e.g., Notice, supra note 16, at 23107.

¹⁸³ See id.

¹⁸⁴ See id.

¹⁸⁵ See id. at 23104.

Participants stated that options market-maker quotes will be included in the calculation of total message traffic for options market-makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.¹⁸⁶

V. Proceedings to Determine Whether to Approve or Disapprove the Proposed Rule Changes

In addition to temporarily suspending the proposal, the Commission also hereby institutes proceedings pursuant to Sections 19(b)(3)(C)¹⁸⁷ and 19(b)(2) of the Act¹⁸⁸ to determine whether the Exchange's proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁸⁹ the Commission is hereby providing notice of the grounds for disapproval under consideration. The Commission believes that instituting proceedings will allow for additional analysis of, and input from commenters with respect to, the

¹⁸⁶ See *id.* at 23106 n.36.

¹⁸⁷ 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

¹⁸⁸ 15 U.S.C. 78s(b)(2).

¹⁸⁹ 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See *id.*

proposed rule change’s consistency with: (1) Section 6(b)(4)¹⁹⁰ and Section 15A(b)(5),¹⁹¹ which require the rules of an exchange or a national securities association to “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;”¹⁹² (2) Section 6(b)(5) and Section 15A(b)(6), which require the rules of an exchange or a national securities association to, among other things, “promote just and equitable principles of trade . . . protect investors and the public interest; and [to be] not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;”¹⁹³ (3) Section 6(b)(8) and Section 15A(b)(9), which require the rules of an exchange or a national securities association to “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this chapter;”¹⁹⁴ and (4) the funding principles set forth in the CAT NMS Plan, which state that the Operating Committee shall seek, among other things, “to establish an allocation of the Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations”¹⁹⁵ and “to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.”¹⁹⁶

¹⁹⁰ 15 U.S.C. 78f(b)(4).

¹⁹¹ 15 U.S.C. 78o-3(b)(5).

¹⁹² 15 U.S.C. 78f(b)(4).

¹⁹³ 15 U.S.C. 78f(b)(5); 15 U.S.C. 78o-3(b)(6).

¹⁹⁴ 15 U.S.C. 78f(b)(8); 15 U.S.C. 78o-3(b)(9).

¹⁹⁵ Section 11.2(b) of the CAT NMS Plan.

¹⁹⁶ Section 11.2(e) of the CAT NMS Plan.

The Commission believes that the proposed rule changes raise questions as to whether the allocation of the total CAT costs recovered between and among Industry Members and Execution Venues is reasonable, equitable, and not unfairly discriminatory under Section 6 and Section 15A of the Act. In particular, the Commission wishes to consider further whether the allocation of 75% of total CAT costs recovered to Industry Members (other than Execution Venue ATs) and 25% to Execution Venues is equitable and not unfairly discriminatory, and whether the CAT Fees are consistent with the funding principles set forth in the CAT NMS Plan, which state that, in establishing the funding of the Company, the Operating Committee shall seek, among other things, “to establish an allocation of the Company’s related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations”¹⁹⁷ and “to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality.”¹⁹⁸

The Commission also believes the proposed rule changes raise questions as to whether the Participants have addressed the impact of the proposed tiers on Industry Members who are options market makers, who are required to continually quote a two-sided market in hundreds of thousands of options series. Specifically, the Commission wishes to consider further whether the proposed rule changes will result in an undue or inappropriate burden on competition under

¹⁹⁷ Section 11.2(b) of the CAT NMS Plan.

¹⁹⁸ Section 11.2(e) of the CAT NMS Plan.

Section 6 and Section 15A or lead to a reduction in market quality contrary to the funding principles expressed in the CAT NMS Plan.¹⁹⁹

Finally, the Commission believes the proposed rule changes raise questions as to whether the determination to place Execution Venues for OTC Equity Securities in the same tier structure as Execution Venues for NMS Stocks will result in an undue or inappropriate burden on competition under Section 6 and Section 15A. Specifically, the Commission wishes to consider whether the Participants' decision to group Execution Venues for OTC Equity Securities and NMS Stocks in one tier structure, recognizing that the application of share volume may lead to different outcomes as applied to OTC Equity Securities and NMS Stocks. The Commission is also considering whether the determination to place Execution Venues representing less than 1% of NMS market share in the same tier structure as other Equity Execution Venues will result in an undue or inappropriate burden on competition under Section 6 and Section 15A.

VI. Commission's Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register]. The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the proposal, which are set forth in the proposed rule changes,²⁰⁰ in

¹⁹⁹ See id. (requiring the Operating Committee "to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality").

²⁰⁰ See, e.g., Notice, supra note 16.

addition to any other comments they may wish to submit about the proposed rule changes. In particular, the Commission seeks comment on the following:

- 1) With respect to the proposed allocation of total CAT costs:
 - a) Commenters' views on the determination to allocate 75% of total CAT costs recovered to Industry Members (other than Execution Venue ATSS) and 25% to Execution Venues;
 - b) Commenters' views on whether the proposed allocation of CAT Fees is consistent with the funding principles expressed in the CAT NMS Plan, which state that the Operating Committee shall seek, among other things, "to establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act taking into account . . . distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company resources and operations"²⁰¹ and "to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality";²⁰²
 - c) Commenters' views on whether the Participants' approach to accounting for affiliations among Execution Venues in setting CAT Fees disadvantages non-affiliated Execution Venues or otherwise burdens competition in the market for trading services; and

²⁰¹ Section 11.2(b) of the CAT NMS Plan.

²⁰² Section 11.2(e) of the CAT NMS Plan.

d) Commenters' views on potential alternative allocations of total CAT costs to Industry Members and Execution Venues, including allocations that do not so heavily account for comparability between and among Industry Member Complexes and Execution Venue Complexes.

2) With respect to the proposed CAT Fees for Execution Venues:

a) Commenters' views on the determination to place Equity Execution Venues for OTC Equity Securities and Equity Execution Venues representing less than 1% NMS market share (primarily lower volume ATSs) in the same fee tier structure as large Equity Execution Venues for NMS Stocks, including views as to whether this approach is consistent with the funding principles outlined in the CAT NMS Plan, views as to how this approach will affect competition in the market for trading services for low-priced NMS Stocks and/or securities not listed on national securities exchanges, and views regarding how these venues can be expected to contribute to CAT message traffic compared to other Equity Execution Venues;

b) Commenters' views as to whether a separate tier structure should have been created for Equity Execution Venues for OTC Equity Securities, similar to the separate tier structure created for Options Execution Venues;

- c) Commenters' views, and supporting data, on whether charging Execution Venues based on message traffic will result in large and small Execution Venues paying comparable fees; and
 - d) Commenters' views on the appropriate number of tiers for Execution Venues and the appropriate distribution of fees across such tiers.
- 3) With respect to the proposed CAT Fees for both Industry Members and Execution Venues, commenters' views on whether the decreasing cost per additional unit (of message traffic in the case of Industry Members or of share volume in the case of Execution Venues) in the proposed fee schedules burdens competition by disadvantaging small Industry Members and Execution Venues and/or by creating barriers to entry in the market for trading services and/or the market for broker-dealer services.²⁰³
- 4) With respect to the proposed CAT Fees for Industry Members:
- a) Commenters' views on the determination to include options market-maker quotes in message traffic for purposes of calculating the appropriate fee tier for options market-makers; and
 - b) Commenters' views on the appropriate number of tiers for Industry Members and the appropriate distribution of fees across such tiers.

The Commission also requests that commenters provide analysis to support their views, if possible.

²⁰³ The fee structure tends to charge more per unit of message traffic to smaller Industry Members, and more per unit of share volume to smaller Execution Venues.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposed rule changes are 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. Please include any of: File Nos. SR-BatsBYX-2017-11; SR-BatsBZX-2017-38; SR-BatsEDGA-2017-13; SR-BatsEDGX-2017-22; SR-BOX-2017-16; SR-BX-2017-023; SR-C2-2017-017; SR-CBOE-2017-040; SR-CHX-2017-08; SR-FINRA-2017-011; SR-GEMX-2017-17; SR-IEX-2017-16; SR-ISE-2017-45; SR-MIAX-2017-18; SR-MRX-2017-04; SR-NASDAQ-2017-046; SR-NYSE-2017-22; SR-NYSEArca-2017-52; SR-NYSEMKT-2017-26; SR-PEARL-2017-20; or SR-PHLX-2017-37 on the subject line.

Paper comments:

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

All submissions should refer to any of: File Nos. SR-BatsBYX-2017-11; SR-BatsBZX-2017-38; SR-BatsEDGA-2017-13; SR-BatsEDGX-2017-22; SR-BOX-2017-16; SR-BX-2017-023; SR-C2-2017-017; SR-CBOE-2017-040; SR-CHX-2017-08; SR-FINRA-2017-011; SR-GEMX-2017-17; SR-IEX-2017-16; SR-ISE-2017-45; SR-MIAX-2017-18; SR-MRX-2017-04; SR-NASDAQ-2017-046; SR-NYSE-2017-22; SR-NYSEArca-2017-52; SR-NYSEMKT-2017-26; SR-PEARL-2017-20; or SR-PHLX-2017-37. The file numbers 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Participants. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to any of: File Nos. SR-BatsBYX-2017-11; SR-BatsBZX-2017-38; SR-BatsEDGA-2017-13; SR-BatsEDGX-2017-22; SR-BOX-2017-16; SR-BX-2017-023; SR-C2-2017-017; SR-CBOE-2017-040; SR-CHX-2017-08; SR-FINRA-2017-011; SR-GEMX-2017-17; SR-IEX-2017-16; SR-ISE-2017-45; SR-MIAX-2017-18; SR-MRX-2017-04; SR-NASDAQ-2017-046; SR-NYSE-2017-22; SR-NYSEArca-2017-52; SR-NYSEMKT-2017-26; SR-PEARL-2017-20; or SR-PHLX-2017-37 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Act,²⁰⁴ that File Nos. SR-BatsBYX-2017-11; SR-BatsBZX-2017-38; SR-BatsEDGA-2017-13; SR-BatsEDGX-2017-22; SR-BOX-2017-16; SR-BX-2017-023; SR-C2-2017-017; SR-CBOE-2017-040; SR-CHX-2017-08; SR-FINRA-2017-011; SR-GEMX-2017-17; SR-IEX-2017-16; SR-ISE-2017-45; SR-MIAX-2017-18; SR-MRX-2017-04; SR-NASDAQ-2017-046; SR-NYSE-2017-22; SR-NYSEArca-2017-52; SR-NYSEMKT-2017-26; SR-PEARL-2017-20; and SR-PHLX-2017-37 be and hereby are, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule changes should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰⁵

Brent J. Fields
Secretary

²⁰⁴ 15 U.S.C. 78s(b)(3)(C).

²⁰⁵ 17 CFR 200.30-3(a)(57) and (58).