

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100920; File No. SR-FINRA-2024-012)

September 4, 2024

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) Related to Reasonably Budgeted Costs of the National Market System Plan Governing the Consolidated Audit Trail for the Period From July 16, 2024 Through December 31, 2024

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 26, 2024, 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 and II 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 Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Consolidated Audit Trail (“CAT”) cost recovery fee designed to permit FINRA substantially to recoup its designated portion of the reasonably budgeted CAT costs of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”) for the period of July 16, 2024 through December 31, 2024.⁵

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 to submit a national market system (“NMS”) plan to create, implement and maintain a consolidated audit trail that would capture customer and order event information for orders in NMS securities across all markets, from the time of order inception through routing, cancellation, modification, or execution.⁶ On November 15, 2016, the

⁵ Pursuant to Section 11.3(a) 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 reasonably budgeted CAT costs for the period of July 16, 2024 through December 31, 2024. See File No. SR-FINRA-2024-011. 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).

⁶ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

Commission approved the CAT NMS Plan.⁷ 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.⁸ 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.⁹

The CAT Funding Model provides a framework for the recovery of the costs to create, develop, and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants;¹⁰ and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund Prospective CAT Costs, *i.e.*, costs not previously paid by the Participants.¹¹

With respect to CAT fees implemented to fund Prospective CAT Costs, to date, the CAT Operating Committee has established CAT Fee 2024-1 to implement fees payable by Industry Members regarding reasonably budgeted Prospective CAT Costs for the period July 16, 2024

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

⁸ See Section 11.1(b) of the CAT NMS Plan.

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

¹⁰ See Section 11.3(b) of the CAT NMS Plan.

¹¹ See Section 11.3(a) of the CAT NMS Plan.

through December 31, 2024 (“Budgeted CAT Costs 2024-1”).¹² Consistent with the Plan, the Operating Committee has also established fees payable to CAT LLC by the Participants to collect the Participants’ designated portion of Budgeted CAT Costs 2024-1.¹³ Participants would only be required to pay such fees once CAT Fee 2024-1 is in effect with regard to Industry Members in accordance with Section 19(b) of the Exchange Act.¹⁴

In light of the filing of File No. SR-FINRA-2024-011, which implements CAT Fee 2024-1 with regard to Industry Members, FINRA is filing the instant proposed rule change to establish a fee that would allow FINRA substantially to recover the monthly fees it is required to pay to CAT LLC towards Budgeted CAT Costs 2024-1 (“Prospective CAT Cost Recovery Fee 2024-1”). 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.”¹⁵ 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.”¹⁶ Given the approval of the CAT Funding Model and

¹² As detailed in File No. SR-FINRA-2024-011, Budgeted CAT Costs 2024-1 would be \$138,476,925. Industry Members would be collectively responsible for two-thirds of those costs or \$92,317,950, and Participants would be collectively responsible for one-third or \$46,158,975. See also Sections 11.3(a)(ii)(A) and 11.3(a)(iii)(A) of the CAT NMS Plan.

¹³ See Section 11.3(a)(ii) and Appendix B of the CAT NMS Plan; see also CAT Funding Model Approval Order, 88 FR 62628, 62660 (“The CAT Fees charged to Participants would be implemented through an approval of the CAT Fees by the Operating Committee and not through a plan amendment submitted each time the Fee Rate changes, while CAT Fees charged to Industry Members may only become effective in accordance with the requirements of Section 19(b) of the Exchange Act.”).

¹⁴ See Section 11.3(a)(ii)(B) of the CAT NMS Plan; see also CAT Funding Model Approval Order, 88 FR 62628, 62660 (“The Commission also believes it is reasonable that proposed Section 11.3(a)(ii)(B) provides that the Participants would be required to pay CAT Fees only when Industry Members are required to pay CAT Fees.”).

¹⁵ CAT Funding Model Approval Order, 88 FR 62628, 62636-37.

¹⁶ 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

FINRA’s proposed rule change to establish CAT Fee 2024-1 to effectuate the CAT Funding Model,¹⁷ FINRA is submitting this filing to implement Prospective CAT Cost Recovery Fee 2024-1.¹⁸

FINRA’s Designated Portion of Budgeted CAT Costs 2024-1

As discussed in File No. SR-FINRA-2024-011, the Operating Committee has established CAT Fee 2024-1, payable to CAT LLC by Industry Members, to contribute toward the recovery of two-thirds of the \$138,476,925 in Budgeted CAT Costs 2024-1 over the July 16, 2024 through December 31, 2024 period.¹⁹ The Operating Committee further determined that the fee rate for CAT Fee 2024-1 is \$0.0001043598251997246 per executed equivalent share,²⁰ and,

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, 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.

¹⁷ See File No. SR-FINRA-2024-011.

¹⁸ 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 CAT Fee related to Prospective CAT Costs until the Financial Accountability Milestone related to Period 4 described in Section 11.6 has been satisfied.” See Section 11.3(a)(iii)(C) of the CAT NMS Plan. As discussed in File No. SR-FINRA-2024-011, the substantive requirements of the Financial Accountability Milestones related to Period 4 have been satisfied, as the CAT has completed the requirements for the Full Implementation of CAT NMS Plan Requirements. Under Section 1.1 of the CAT NMS Plan, this Financial Accountability Milestone is considered complete as of the date identified in the Participants’ Quarterly Progress Reports. As indicated by the Participants’ Quarterly Progress Report for the second and third quarter of 2024, Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024. See CAT Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024), https://www.catnmsplan.com/sites/default/files/2024-07/CAT_Q2-and-Q3-2024-QPR.pdf.

¹⁹ Consistent with Section 11.3(a)(iii)(B) of the CAT NMS Plan, Budgeted CAT Costs 2024-1 include reasonably budgeted (1) technology line items (including cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs), (2) legal fees, (3) consulting fees, (4) insurance, (5) professional and administration expenses, (6) public relations costs, and (7) a reserve. A detailed description (including the amounts) of all such costs budgeted during the July 16, 2024 through December 31, 2024 period is provided in File No. SR-FINRA-2024-011.

²⁰ 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

under the CAT Funding Model, each of the CAT Executing Broker for the Buyer (“CEBB”), the CAT Executing Broker for the Seller (“CEBS”), and the relevant Participant for a given transaction in an Eligible Security would be responsible for one-third of that rate, or \$0.000035 per executed equivalent share.²¹ Consequently, CEBBs collectively, CEBSs collectively, and the Participants collectively will each be responsible for \$46,158,975, which is one-third of Budgeted CAT Costs 2024-1 during the September 1, 2024 through December 31, 2024 CAT Fee 2024-1 period.²²

For the twelve months from June 1, 2023 through May 31, 2024, the average monthly executed equivalent share volume in Eligible Securities where FINRA was the relevant Participant (i.e., off-exchange transactions) was approximately 104.7 billion shares. Assuming similar monthly executed equivalent share volume for off-exchange transactions in Eligible Securities for the period of September 1, 2024 through December 31, 2024, FINRA would be responsible for paying approximately \$3.7 million per month and approximately \$14.7 million in total to CAT LLC toward the Participants’ \$46,158,975 designated portion of Budgeted CAT Costs 2024-1 (or approximately 31.8% of the total).

FINRA’s recovery of its designated portion of Budgeted CAT Costs 2024-1 is reasonable and consistent with the Exchange Act. As discussed herein and in File No. SR-FINRA-2024-011, Budgeted CAT Costs 2024-1 are reasonable, appropriate and necessary for the creation, implementation, and maintenance of the CAT. And the portion of Budgeted CAT Costs 2024-1

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.

²¹ Dividing \$0.0001043598251997246 by three and rounding to six decimal places equals \$0.000035.

²² See File No. SR-FINRA-2024-011.

designated to FINRA has been established under the SEC-approved CAT Funding Model. As stated by FINRA and permitted under the Exchange Act, FINRA will seek to recover its designated portion of the Participants' share of CAT costs to ensure that FINRA can fulfill its regulatory mandate and responsibilities.²³

Prospective CAT Cost Recovery Fee 2024-1

FINRA is proposing to adopt Rule 6897(b) (CAT Cost Recovery Fees) to implement Prospective CAT Cost Recovery Fee 2024-1 to allow FINRA substantially to recover its designated portion of Budgeted CAT Costs 2024-1.²⁴ FINRA intends that the fee framework for the Prospective CAT Cost Recovery Fee 2024-1 would generally correspond to the framework put in place by CAT LLC with respect to CAT Fee 2024-1, as provided for in File No. SR-FINRA-2024-011, as further discussed below. FINRA also intends that the timing and commencement of payment for Prospective CAT Cost Recovery Fee 2024-1 would correspond with that established by CAT LLC with respect to CAT Fee 2024-1, as provided for in File No. SR-FINRA-2024-011. Thus, as with CAT Fee 2024-1, FINRA proposes that each member CAT Executing Broker shall receive its first invoice for Prospective CAT Cost Recovery Fee 2024-1 in October 2024, setting forth fees calculated based on September 2024 transactions in Eligible Securities executed otherwise than on an exchange, as reflected in CAT Data.

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for transactions executed otherwise than on an exchange.²⁵

²³ See supra note 16.

²⁴ 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.

²⁵ 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

TRF/ORF/ADF Transaction Data Event²⁶

#	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-2024-011, consistent with the CAT Funding Model, in implementing CAT Fee 2024-1, the Operating Committee has determined that each of the CEBB, CEBS and relevant Participant for a given transaction in an Eligible Security would be assessed a fee of \$0.000035 per executed equivalent share.²⁷ In line with this approach, FINRA is proposing, for Prospective CAT Cost Recovery Fee 2024-1, to split the fee rate that is assessed to FINRA under CAT Fee 2024-1 between each of the CEBB and CEBS for transactions where FINRA is the relevant Participant, subject to truncation at six decimal places. To maintain consistency with CAT LLC's use of six decimal places,²⁸ FINRA proposes to use six decimal places for Prospective CAT Cost Recovery Fee 2024-1.²⁹ FINRA proposes to limit Prospective

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.

²⁶ See Table 61, Section 6.1 (TRF/ORF/ADF Transaction Data Event) of the CAT Reporting Technical Specifications for Plan Participants.

²⁷ As noted in File No. SR-FINRA-2024-011, CAT LLC determined to use six decimal places for the CAT Fee 2024-1 fee rate (i.e., \$0.000035 per executed equivalent share) to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation.

²⁸ See *supra* note 27.

²⁹ FINRA believes that it is appropriate at this time to use six decimal places to maintain consistency with the approach determined by CAT LLC. FINRA notes that the billing system used for both invoices in connection with CAT Fee 2024-1 and the Prospective CAT Cost Recovery Fee 2024-1 is configured for up to six decimal places, making extending the fee rate for Prospective CAT Cost Recovery Fee 2024-1 to seven decimal places impracticable in the near term.

CAT Cost Recovery Fee 2024-1 to six decimal places by truncating the halved CAT Fee 2024-1 fee rate such that each member CEBB and CEBS would pay a fee of \$0.000017 per executed equivalent share for each transaction in Eligible Securities executed otherwise than on an exchange.³⁰

By truncating half of the CAT Fee 2024-1 fee rate in this manner, FINRA would recover less per executed equivalent share under Prospective CAT Cost Recovery Fee 2024-1 (\$0.000034) than it will be invoiced each month for CAT Fee 2024-1 (\$0.000035), resulting in a total deficit of approximately \$400,000 during the September 1, 2024 through December 31, 2024 period, which FINRA is not seeking to recover.³¹

To implement Prospective CAT Cost Recovery Fee 2024-1, FINRA proposes to adopt Rule 6897(b)(1)(C)(i) to provide that each member CAT Executing Broker shall receive its first invoice from FINRA in October 2024, setting forth the Prospective CAT Cost Recovery Fee 2024-1 fees calculated based on transactions in September 2024, and shall receive an invoice for Prospective CAT Cost Recovery Fee 2024-1 from FINRA for each month thereafter until January 2025. As provided in proposed Rule 6897(b)(1)(C)(ii), FINRA shall provide each member CAT Executing Broker with an invoice for Prospective CAT Cost Recovery Fee 2024-1 on a monthly basis (which shall be separate from the invoice provide by CAT LLC with respect

³⁰ Dividing \$0.000035 by two equals \$0.0000175.

³¹ Given that the average monthly executed equivalent share volume in Eligible Securities where FINRA was the relevant Participant was approximately 104.7 billion shares for the 12 months from June 1, 2023 through May 31, 2024, and assuming similar volumes for the period from September 1, 2024 through December 31, 2024, FINRA would be invoiced approximately \$14.7 million for CAT Fee 2024-1 but would only bill approximately \$14.3 million to member CEBBs and CEBSs via Prospective CAT Cost Recovery Fee 2024-1 during the same period.

However, FINRA intends to avoid a similar shortfall from occurring with respect to future fee recovery past December 2024 (e.g., by rounding up the last digit instead of truncating, or another means of addressing this issue). The fee rate resulting from any such determinations would be subject to a proposed rule change filed pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 thereunder.

to CAT Fee 2024-1). Each monthly invoice provided by FINRA shall set forth a fee for each transaction in Eligible Securities executed by the CAT Executing Broker in its capacity as the CEBB and/or the CEBS (as applicable) otherwise than on an exchange from the prior month as set forth in CAT Data. The 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 Prospective CAT Cost Recovery Fee 2024-1 fee rate of \$0.000017 per executed equivalent share.

Further, as provided in proposed Rule 6897(b)(1)(C)(iii), notwithstanding the last invoice date of January 2025 for Prospective CAT Cost Recovery Fee 2024-1 in Rule 6897(b)(1)(C)(i), Prospective CAT Cost Recovery Fee 2024-1 shall continue in effect after January 2025, with each CAT Executing Broker receiving an invoice for Prospective CAT Cost Recovery Fee 2024-1 each month, until a new subsequent Prospective CAT Cost Recovery Fee is in effect with regard to members in accordance with Section 19(b) of the Exchange Act.³² Proposed paragraph (b)(1)(C)(iii) of Rule 6897 also states that FINRA will provide notice when Prospective CAT Cost Recovery Fee 2024-1 will no longer be in effect. Proposed Rule 6897(b)(1)(C)(iv) provides that each member CAT Executing Broker shall be required to pay each invoice for Prospective CAT Cost Recovery Fee 2024-1 as set forth in Rule 6897(b)(2).

FINRA also proposes to adopt Rule 6897(b)(2) (Timing and Manner of Payments), which provides that each member CAT Executing Brokers shall pay the CAT Cost Recovery Fees as

³² As noted in File No. SR-FINRA-2024-011, CAT Fee 2024-1 would continue in effect after January 2025 until a new subsequent CAT Fee to collect the Industry Members' designated portion of Budgeted CAT Costs is in effect, in accordance with Section 19(b) of the Exchange Act. While CAT Fee 2024-1 remains in effect for Industry Members, the Participants would continue to be assessed a monthly fee based on that same fee rate, i.e., \$0.000035 per executed equivalent share. Likewise, unless amended, Prospective CAT Cost Recovery Fee 2024-1 also would remain in effect to allow FINRA to continue substantially to recoup funds in connection with its monthly payment obligations under CAT Fee 2024-1, until a new CAT Fee is established by the Operating Committee.

required pursuant to Rule 6897(b)(1) each month to FINRA in the manner prescribed by FINRA. In addition, proposed paragraph (b)(2)(B) of Rule 6897 provides that each CAT Executing Broker shall pay the CAT Cost Recovery Fees required pursuant to Rule 6897(b)(1) within 30 days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).

Beginning with the initial invoice for Prospective CAT Cost Recovery Fee 2024-1 in October 2024, FINRA will make available to each member CAT Executing Broker a copy of the relevant details for fee liable transactions executed each month otherwise than on an exchange. Similar to the information that would be provided by CAT LLC to CAT Executing Brokers in assessing the off-exchange portion of CAT Fee 2024-1 each month,³³ such information would provide member CAT Executing Brokers with the ability to understand the details regarding the calculation of their Prospective CAT Cost Recovery Fee 2024-1 fees. In addition, to provide transparency to the industry, FINRA will make publicly available on its website: (i) the total amount invoiced each month that Prospective CAT Cost Recovery Fee 2024-1 is in effect, (ii) the total amount invoiced for Prospective CAT Cost Recovery Fee 2024-1 for all months since its commencement, (iii) the total amount that FINRA is invoiced each month by CAT LLC in connection with CAT Fee 2024-1, (iv) the total amount that FINRA has been invoiced for CAT Fee 2024-1 for all months since its commencement, and (v) the variance, both on a monthly and cumulative basis, between the amount invoiced by FINRA under Prospective CAT Cost Recovery 2024-1 and the amount FINRA is invoiced under CAT Fee 2024-1.

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

³³ See File No. SR-FINRA-2024-011.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³⁴ 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,³⁵ 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.³⁶ 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.³⁷

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

³⁴ 15 U.S.C. 78o-3(b)(6).

³⁵ 15 U.S.C. 78o-3(b)(5).

³⁶ 15 U.S.C. 78o-3(b)(9).

³⁷ See 15 U.S.C. 78o-3(b)(2).

to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”³⁸ 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-2024-011, FINRA believes that the proposed fees paid by the CEBBs and CEBSs in connection with CAT Fee 2024-1 are reasonable, equitably allocated and not unfairly discriminatory. Prospective CAT Cost Recovery Fee 2024-1 would similarly allow FINRA substantially to recover costs related to CAT Fee 2024-1 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 Prospective CAT Cost Recovery Fee 2024-1 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 would not result in any surplus to FINRA.³⁹ Accordingly, FINRA believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

The reasonableness of Prospective CAT Cost Recovery Fee 2024-1 and its consistency with the Exchange Act likewise is grounded in the facts described above and detailed in File No. SR-FINRA-2024-011. Specifically, the reasonably budgeted expenses that compose the portion

³⁸ CAT NMS Plan Approval Order, 81 FR 84696, 84697.

³⁹ See supra note 31 and accompanying text.

of Budgeted CAT Costs 2024-1 sought substantially to be recovered through Prospective CAT Cost Recovery Fee 2024-1 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-2024-011, are reasonable and it is appropriate that FINRA substantially recover its designated portion of such costs through Prospective CAT Cost Recovery Fee 2024-1. FINRA also has determined that Prospective CAT Cost Recovery Fee 2024-1 provides for the equitable allocation of fees among FINRA members and is not unfairly discriminatory, as discussed herein.

Prospective CAT Cost Recovery Fee 2024-1 is designed to allow FINRA to substantially recover its designated portion of Budgeted CAT Costs 2024-1, consistent with the Exchange Act and the CAT Funding Model Approval Order.⁴⁰ 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.”⁴¹ 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.”⁴² 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

⁴⁰ See supra note 16 and note 31 and accompanying text.

⁴¹ See CAT Funding Model Approval Order, 88 FR 62628, 62645.

⁴² See CAT Funding Model Approval Order, 88 FR 62628, 62636.

Model.”⁴³ The instant proposed rule change to adopt Prospective CAT Cost Recovery Fee 2024-1 represents such a fee with respect to Budgeted CAT Costs 2024-1.

Without a mechanism to recover its CAT costs, FINRA, which is unique among the Participants as a not-for-profit, national securities association, would not be able to effectively sustain its regulatory mission.⁴⁴ 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 substantially to recoup its designated portion of Budgeted CAT Costs 2024-1 in a like manner that is fair, reasonable, and equitably allocated among FINRA’s member firms in their capacity as CAT Executing Brokers.

Prospective CAT Cost Recovery Fee 2024-1 is designed substantially to recover FINRA’s designated portion of budgeted CAT costs to be incurred by CAT LLC associated with the development, implementation, and operation of the CAT system under the CAT NMS Plan. Thus, Prospective CAT Cost Recovery Fee 2024-1 also generally is designed to support FINRA’s efforts 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.⁴⁵

FINRA’s approach in determining Prospective CAT Cost Recovery Fee 2024-1, which generally is consistent with the approach provided for under the SEC-approved CAT Funding

⁴³ See supra note 41.

⁴⁴ See supra note 16.

⁴⁵ See FINRA’s Financial Guiding Principles, https://www.finra.org/sites/default/files/finra_financial_guiding_principles_0.pdf. See also 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).

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 FINRA's designated portion of the Participants' one-third share of Budgeted CAT Costs 2024-1.⁴⁶ FINRA proposes to determine the rate for Prospective CAT Cost Recovery Fee 2024-1 by dividing the fee rate assessed to the Participants in connection with the implementation of CAT Fee 2024-1, i.e., \$0.000035 per executed equivalent share, by two and then truncating the result to six decimal places such that member CEBBs and CEBSs would each be subject to an equal fee, i.e., \$0.000017 per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange. Therefore, for each month that Prospective CAT Cost Recovery Fee 2024-1 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 CAT Fee 2024-1 for off-exchange transactions.⁴⁷ FINRA believes that this approach is reasonable in that, as is the case with the SEC-approved CAT Funding Model, it apportions the assessed fee for members equally between the CAT Executing Broker for the buyer and the seller.⁴⁸

FINRA believes that it is reasonable, appropriate, and consistent with the Exchange Act to determine Prospective CAT Cost Recovery Fee 2024-1 by dividing CAT Fee 2024-1, i.e.,

⁴⁶ 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.

⁴⁷ Based on historical executed equivalent share volumes in Eligible Securities where FINRA was the relevant Participant, FINRA would expect to recoup roughly \$3.6 million per month during the time that Prospective CAT Cost Recovery Fee 2024-1 is in effect. See supra note 31.

⁴⁸ See supra note 46.

\$0.000035 per executed equivalent share, by two (which equals \$0.0000175) and then truncating the result to six decimal places such that member CEBBs and CEBSs would each be subject to an equal fee of \$0.000017 per executed equivalent share. As discussed above, equally apportioning the fee between the CEBBs and CEBSs is consistent with the approach to apportioning costs between Executing Brokers under the SEC-approved CAT Funding Model.⁴⁹ In addition, FINRA believes it is reasonable and appropriate at this time to truncate half of CAT Fee 2024-1 to limit the Prospective CAT Cost Recovery Fee 2024-1 fee rate to six decimal places. As noted above and in File No. SR-FINRA-2024-011, CAT LLC determined to use six decimal places for the CAT Fee 2024-1 fee rate to balance the accuracy of the calculation with the potential systems and other impracticalities of using additional decimal places in the calculation. FINRA likewise believes that it is appropriate at this time to use six decimal places to maintain consistency with the approach determined by CAT LLC, to which members have been testing since earlier this year, which should reduce potential complexity in connection with the fee and billing structure for Prospective CAT Cost Recovery Fee 2024-1.

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 Act⁵⁰ 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

⁴⁹ See supra note 46.

⁵⁰ 15 U.S.C. 78q-3(b)(9).

Act. FINRA notes that Prospective CAT Cost Recovery Fee 2024-1 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.⁵¹ 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.⁵² Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. The Prospective CAT Cost Recovery Fee 2024-1 framework generally is consistent with the fee framework of the CAT Funding Model, as approved by the SEC.

As discussed in File No. SR-FINRA-2024-011, each of the inputs into the calculation of CAT Fee 2024-1 is reasonable and the resulting fee rate for CAT Fee 2024-1 is reasonable. Therefore, Prospective CAT Cost Recovery Fee 2024-1, 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, FINRA has undertaken an economic impact assessment, as set forth below, to analyze the potential economic impacts of the proposed

⁵¹ See CAT Funding Model Approval Order, 88 FR 62628, 62678-86.

⁵² See supra note 51.

rule change, including potential costs, benefits, and distributional and competitive effects, relative to the current baseline.

Regulatory Need

As discussed above under the “FINRA’s Designated Portion of Budgeted CAT Costs 2024-1” section, FINRA is filing a proposed rule change to establish Prospective CAT Cost Recovery Fee 2024-1 substantially to recover its designated portion of the Participants’ share of Budgeted CAT Costs 2024-1. FINRA intends that the fee framework and timeline for Prospective CAT Cost Recovery Fee 2024-1 generally correspond to the fee framework and timeline put in place by CAT LLC with respect to CAT Fee 2024-1, as provided for in File No. SR-FINRA-2024-011 and as discussed above.

Economic Baseline

Also, as discussed above under the “FINRA’s Designated Portion of Budgeted CAT Costs 2024-1” section, FINRA arrived at the fee rate for Prospective CAT Cost Recovery Fee 2024-1 by dividing by two the fee rate assessed to the Participants in connection with the implementation of CAT Fee 2024-1, *i.e.*, \$0.000035 per executed equivalent share, and truncating the result to six decimal places.⁵³

For the twelve months from June 1, 2023, through May 31, 2024, based on transactions reported to a FINRA TRF or to the ORF, there were 896 firm MPIDs that executed at least one purchase or sale of an equivalent share of an Eligible Security.⁵⁴ The top 50 MPIDs by reported

⁵³ See also File No. SR-FINRA-2024-011.

⁵⁴ For the twelve months from June 1, 2023, through May 31, 2024, approximately 1.25 trillion shares of NMS stocks were reported to the TRF, and approximately 1.16 trillion 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 a FINRA equity trade reporting facility in that twelve-month period is approximately 1.26 trillion shares. Dividing that figure by twelve provides the average monthly executed equivalent share volume of approximately 104.7 billion shares.

executed equivalent share volume bought and/or sold 2,161,308,428,108 equivalent shares, or 85.08% of total shares bought and/or sold.

Economic Impacts

FINRA's proposal substantially to recover its designated portion of the Participants' share of Prospective CAT Costs applies an approach generally consistent with the CAT Funding Model as approved by the SEC in that it assesses half of the fee rate that is assessed to FINRA under CAT Fee 2024-1 (truncated to six decimal places) to each of the CEBB and CEBS for transactions where FINRA is the relevant Participant.⁵⁵ With regard to off-exchange transactions in Eligible Securities, generally the same members that will be assessed Prospective CAT Cost Recovery Fee 2024-1 will also be assessed CAT Fee 2024-1. Therefore, FINRA's proposed approach in substantially recovering its designated portion of Budgeted CAT Costs 2024-1 should reduce potential complexity in connection with the fee and billing structure for Prospective CAT Cost Recovery Fee 2024-1.⁵⁶

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.⁵⁷ However, we do not know whether or to what extent (or how) the exchanges may seek to recover their portion of the Budgeted CAT Costs 2024-1, 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

⁵⁵ See also File No. SR-FINRA-2024-011 and CAT Funding Model Approval Order, 88 FR 62628.

⁵⁶ See *supra* notes 29 through 31 and accompanying text.

⁵⁷ See CAT Funding Model Approval Order, 88 FR 62628, 62684.

note that FINRA members remain subject to regulatory obligations, such as best execution obligations, with respect to their order routing decisions.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act⁵⁸ and Rule 19b-4(f)(2) thereunder,⁵⁹ because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

⁵⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁹ 17 CFR 240.19b-4(f)(2).

- Send an email to rule-comments@sec.gov. Please include file number SR-FINRA-2024-012 on the subject line.

Paper Comments:

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

All submissions should refer to file number SR-FINRA-2024-012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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-2024-012 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁰

Sherry R. Haywood,
Assistant Secretary.

⁶⁰ 17 CFR 200.30-3(a)(12).