

Required fields are shown with yellow backgrounds and asterisks.

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

File No. * SR 2024 - * 014

Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

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

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

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input checked="" type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

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

Section 806(e)(2) *

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

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

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

Proposed Rule Change to Amend FINRA Rule 6897 (Consolidated Audit Trail Funding Fees) to Implement a Historic CAT Cost Recovery Fee.

Contact Information

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

First Name * Faisal Last Name * Sheikh

Title * Assistant General Counsel

E-mail * faisal.sheikh@finra.org

Telephone * (202) 728-8379 Fax

Signature

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

Date 09/05/2024

(Title *)

By Racquel Russell

Senior Vice President and Director

(Name *)

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

Racquel Russell

Digitally signed by Racquel Russell
Date: 2024.09.05 15:32:58 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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FINRA-2024-014 19b-4.docx

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

Exhibit 1 - Notice of Proposed Rule Change *

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FINRA-2024-014 Exhibit 1.docx

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

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

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

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

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

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

FINRA-2024-014 Exhibit 5.docx

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ the Financial Industry Regulatory Authority, Inc. (“FINRA”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend FINRA Rule 6897(b) (CAT Cost Recovery Fees) to implement a historical Consolidated Audit Trail (“CAT”) recovery assessment designed to permit FINRA to recoup its contributions to recoverable historical costs of the National Market System Plan Governing the Consolidated Audit Trail incurred prior to January 1, 2022.²

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

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

¹ 15 U.S.C. 78s(b)(1).

² Pursuant to Section 11.3(b) of the CAT NMS Plan, FINRA filed a separate proposed rule change to establish fees assessed to Industry Members, payable to Consolidated Audit Trail, LLC, related to recoverable historical CAT costs incurred prior to January 1, 2022. See File No. SR-FINRA-2024-013. 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).

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

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

(a) Purpose

Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory organizations 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.³ On November 15, 2016, the Commission approved the CAT NMS Plan (“Plan” or “CAT NMS Plan”).⁴ 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.⁵ 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,

³ See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

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

⁵ See Section 11.1(b) of the CAT NMS Plan.

after concluding that the model was reasonable and that it satisfied the requirements of Section 11A of the Exchange Act and Rule 608 thereunder.⁶

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

In light of the filing of File No. SR-FINRA-2024-013, which implements Historical CAT Assessment 1 with regard to Industry Members, FINRA is filing the instant proposed rule change to establish a fee to allow FINRA to recoup its contributions to the Participants’ assessed share of Historical CAT Costs 1 (“Historical CAT Cost Recovery Assessment 1”). Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1—amounting to

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

⁷ See Section 11.3(b) of the CAT NMS Plan.

⁸ See Section 11.3(a) of the CAT NMS Plan.

⁹ See File No. SR-FINRA-2024-013.

\$4,391,414—in a manner consistent with the Exchange Act and the CAT Funding Model Approval Order. In the Approval Order, the Commission acknowledged that “the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act.”¹⁰ 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.”¹¹ Given the approval of the CAT Funding Model and FINRA’s proposed rule change to establish Historical CAT Assessment 1 in accordance with the CAT Funding Model,¹² FINRA is submitting this filing to implement Historical CAT Cost Recovery Assessment 1.¹³

¹⁰ CAT Funding Model Approval Order, 88 FR 62628, 62636-37.

¹¹ 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, SEC, dated April 11, 2023 (“FINRA April 2023 Letter”) at 7 (“If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model.”); see also Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, SEC, 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.

¹² See File No. SR-FINRA-2024-013.

¹³ The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in

FINRA’s Designated Portion of Historical CAT Costs 1

As discussed in File No. SR-FINRA-2024-013, which seeks to implement Historical CAT Assessment 1,¹⁴ to date, FINRA and the other Participants have agreed to pay all Past CAT Costs via loans to CAT LLC. Specifically, in the absence of an SEC-approved model establishing how the Participants were to fund the creation, implementation, and maintenance of the CAT, in 2017, FINRA and the other Participants unanimously agreed to apportion all CAT operational costs amongst the group and to fund the CAT through a series of interest-free loans. Through these loans, FINRA contributed \$13,174,243 or roughly 4.14% toward the \$318,059,819 in operating expenses composing Historical CAT Costs 1. Of that approximately \$13 million expenditure, FINRA expects to recover \$8,782,829 in loan repayments from CAT LLC following implementation of Historical CAT Assessment 1, and, under the CAT Funding Model, will forgive the remaining \$4,391,414 in loan repayments, which FINRA now

Section 11.6 has been satisfied.” See Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan. The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, ... the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.” See Section 11.6(b) of the CAT NMS Plan. As discussed in File No. SR-FINRA-2024-013, all applicable Financial Accountability Milestones for Historical CAT Assessment 1 and, by extension, Historical CAT Cost Recovery Assessment 1 – that is, Period 1, Period 2, and Period 3 of the Financial Accountability Milestones – have been satisfied. Furthermore, the costs sought to be recovered via both Historical CAT Assessment 1 and Historical CAT Cost Recovery Assessment 1 relate to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

¹⁴ Historical CAT Assessment 1 seeks to recover from CAT Executing Brokers two-thirds of Historical CAT Costs 1—the \$318,059,819 in recoverable costs incurred by CAT LLC prior to January 1, 2022.

seeks to recover through the implementation of Historical CAT Cost Recovery Assessment 1.¹⁵

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

Period	Participants' Collective Share of Historical CAT Costs 1	FINRA's Share of Historical CAT Costs 1
Pre-FAM Period (Prior to June 22, 2020)	\$41,430,243	\$1,716,067
FAM Period 1	\$2,125,781	\$88,051
FAM Period 2	\$14,325,493	\$593,371
FAM Period 3	\$48,138,423	\$1,993,925
Total (through January 1, 2022)	\$106,019,940	\$4,391,414

FINRA's recovery of these approximately \$4.4 million in Historical CAT Costs is reasonable and consistent with the Exchange Act. As discussed herein and in File No. SR-FINRA-2024-013, these costs were reasonable, appropriate and necessary for the

¹⁵ FINRA notes that, as is the case with respect to Historical CAT Assessment 1 discussed in File No. SR-FINRA-2024-013, FINRA's recovery under the instant proposed rule change also would not include any portion of Excluded Costs, *i.e.*, \$48,874,937 in CAT costs incurred from November 15, 2017 through November 15, 2018, \$19,628,791 of costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded, and \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor.

¹⁶ A detailed description (including the amounts) of all costs incurred by the Participants during the pre-FAM period (prior to June 22, 2020) and during each relevant FAM period, *i.e.*, FAM Period 1, FAM Period 2, and FAM Period 3, is provided in File No. SR-FINRA-2024-013.

creation, implementation and maintenance of the CAT. As stated by FINRA and permitted under the Exchange Act, FINRA will seek to recover its portion of the Participants' share of CAT costs to ensure that FINRA can fulfill its regulatory mandate and responsibilities.¹⁷

Historical CAT Cost Recovery Assessment 1

FINRA is proposing to amend Rule 6897(b) (CAT Cost Recovery Fees) to implement Historical CAT Cost Recovery Assessment 1 at this time to allow FINRA to recover its contributions to the Participants' designated one-third share of Historical CAT Costs 1.¹⁸ FINRA intends that the fee framework for the Historical CAT Cost Recovery Assessment 1 would generally correspond to the framework put in place by CAT LLC with respect to Historical CAT Assessment 1, as provided for in File No. SR-FINRA-2024-013. FINRA also intends that the timing and commencement of payment for Historical CAT Cost Recovery Assessment 1 generally would correspond with that established by CAT LLC with respect to Historical CAT Assessment 1, as provided for in File No. SR-FINRA-2024-013. Thus, as with Historical CAT Assessment 1, FINRA proposes that each member CAT Executing Broker shall receive its first invoice from FINRA for Historical CAT Cost Recovery Assessment 1 in November 2024, setting forth fees calculated based on October 2024 transactions in Eligible Securities executed otherwise than on an exchange, as reflected in CAT Data.

¹⁷ See supra note 11.

¹⁸ 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.

The following fields of the Participant Technical Specifications indicate the CAT Executing Brokers for transactions executed otherwise than on an exchange.¹⁹

TRF/ORF/ADF Transaction Data Event²⁰

#	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-2024-013, the Operating Committee has determined that Historical Fee Rate 1 is \$0.00003994969693072937 per executed equivalent share, and, under the CAT Funding Model, each of the CAT Executing Broker for the Buyer (“CEBB”), CAT Executing Broker for the Seller (“CEBS”), and relevant Participant for a given transaction in an Eligible Security would be responsible for one-

¹⁹ As per Section 1.1 of the Plan, for a transaction in an Eligible Security executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, i.e., one of FINRA’s Trade Reporting Facilities (each a “TRF”), OTC Reporting Facility (“ORF”) or Alternative Display Facility (“ADF”), the CEBB and CEBS are the Industry Members identified as the executing broker and the contra-side executing broker in the TRF/ORF/ADF transaction data event in CAT Data. In those circumstances where there is a non-Industry Member identified as the contra-side executing broker in the TRF/ORF/ADF transaction data event or no contra-side executing broker is identified in the TRF/ORF/ADF transaction data event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as, and be required to pay the fee assessed to, both the CEBB and CEBS.

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

third of that rate, or \$0.00001331656564357646 per executed equivalent share.²¹ In line with this approach, with respect to FINRA's portion of the Participants' one-third share, FINRA is proposing that, for Historical CAT Cost Recovery Assessment 1, the Participants' assessed fee rate would be split evenly between the CEBB and CEBS to establish a Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share²² for transactions where FINRA is the relevant Participant.²³

FINRA proposes to amend Rule 6897(b)(1)(A) to implement Historical CAT Cost Recovery Assessment 1. Proposed Rule 6897(b)(1)(A)(i) would provide that each member CAT Executing Broker shall receive its first invoice from FINRA in November 2024, setting forth the Historical CAT Cost Recovery Assessment 1 fees calculated based

²¹ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. As noted in File No. SR-FINRA-2024-013, CAT LLC determined to use six decimal places for Historical CAT Assessment 1 (i.e., \$0.000013 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.

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

²³ Dividing \$0.00001331656564357646 by two and rounding to six decimal places equals \$0.000007. FINRA believes that it is appropriate at this time to use six decimal places to maintain consistency with the approach determined by CAT LLC.

on transactions in October 2024, and shall receive similar invoices from FINRA for Historical CAT Cost Recovery Assessment 1 for each month thereafter in which Historical CAT Cost Recovery Assessment 1 is in effect. As provided in proposed Rule 6897(b)(1)(A)(ii), FINRA shall provide each member CAT Executing Broker with an invoice for Historical CAT Cost Recovery Assessment 1 on a monthly basis. Each monthly invoice from FINRA (separate from the invoice provide by CAT LLC with respect to Historical CAT Assessment 1) 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 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 Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share.

Further, as provided in proposed Rule 6897(b)(1)(A)(iii), Historical CAT Cost Recovery Assessment 1 will remain in effect until \$4,391,414 (FINRA's contribution to the one-third share of Historical CAT Costs 1 assessed to the Plan Participants) is collected from member CAT Executing Brokers collectively, which is estimated to be four months, but could be for a longer or shorter period of time.²⁴ FINRA will provide notice when Historical CAT Cost Recovery Assessment 1 will no longer be in effect.

²⁴ From June 1, 2023, through May 31, 2024, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant Participant was approximately 104.7 billion shares. Assuming similar 2024 trading volumes, FINRA would recover its approximately \$4.4 million portion of the Participants' assessed share of Historical CAT Costs 1 within four months. Given the fee rate and total amount to be recovered, the proposed four-month recovery period is reasonable.

Proposed Rule 6897(b)(1)(A)(iv) provides that each member CAT Executing broker shall be required to pay each invoice for Historical CAT Cost Recovery Assessment 1 within 30 days of receipt of such invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) and such payment must be made in the manner prescribed by FINRA, as set forth in Rule 6897(b)(2).

As with Historical CAT Assessment 1, since Historical CAT Cost Recovery Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Cost Recovery Assessment 1 may result in the collection of more than FINRA's approximately \$4.4 million contribution to Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Cost Recovery Assessment 1 is in effect will be used to offset future member fees assessed by FINRA in connection with FINRA's designated CAT costs as a Plan Participant.²⁵

Beginning with the initial invoice for Historical CAT Cost Recovery Assessment 1 in November 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 Historical CAT Assessment 1 each month,²⁶ such information would provide member CAT

²⁵ A similar approach will be taken by CAT LLC with respect to any excess money collected pursuant to Historical CAT Assessment 1 during its final month. See File No. SR-FINRA-2024-013.

²⁶ See File No. SR-FINRA-2024-013.

Executing Brokers with the ability to understand the details regarding the calculation of their Historical CAT Cost Recovery Assessment 1 fees. To assist Industry Members in complying with Historical CAT Assessment 1, in November 2023 CAT LLC began making mock invoices with details for any fee liable transactions, including those executed otherwise than on an exchange, available to CAT Executing Brokers.²⁷ FINRA intends to likewise provide these same trade elements in the trade billing details accompanying FINRA invoices each month that Historical CAT Cost Recovery Assessment 1 is in effect.²⁸

²⁷ As detailed in File No. SR-FINRA-2024-013, in addition to providing mock invoices, CAT LLC has worked to address Industry Member concerns regarding reconciliation of invoices for Historical CAT Assessment 1, including providing guidance and processes to assist firms in their efforts to perform reconciliations in connection with CAT invoice data. Specifically, FCAT is providing certain key elements of the trade to CAT Reporters, such as the tradeID and branch sequence, in the trade billing details accompanying CAT invoices to provide CAT Executing Brokers with alternative methods for matching fee-liable transactions with their internal books and records. See File No. SR-FINRA-2024-013.

See also CAT Technical Specifications for Billing Trade Details; Trade Details Schema, <https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>; CAT Billing Scenarios, Version 1.0 (November 30, 2023), <https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>.

²⁸ FINRA billing methodology for Historical CAT Cost Recovery Assessment 1 is aligned with the billing methodology for CAT LLC's Historical CAT Assessment 1 under the SEC-approved CAT Funding Model. As with the Historical CAT Assessment 1 invoices to be provided by CAT LLC to Industry Members, the invoices that FINRA would provide in connection with Historical CAT Cost Recovery Assessment 1 are designed to allow member CEBBs and CEBSs to reconcile the invoiced amounts with the included underlying fee-liable transaction details each month. As noted in File No. SR-FINRA-2024-013, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass on any CAT fees to their customers, and, as such, facilitating CEBBs' and CEBSs' ability to pass through Historical CAT Assessment 1 fees to

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

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

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁹ 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

their clients is outside the scope of the proposal. Likewise, facilitating CEBBs' and CEBSs' ability to pass through their Historical CAT Cost Recovery Assessment 1 fees to their clients is also outside the scope of the instant proposal.

²⁹ 15 U.S.C. 78o-3(b)(6).

consistent with the provisions of Section 15A(b)(5) of the Act,³⁰ 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.³¹ 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.³²

FINRA believes that this proposed rule change is consistent with the Act because it is designed to assist FINRA in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”³³ 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

³⁰ 15 U.S.C. 78o-3(b)(5).

³¹ 15 U.S.C. 78o-3(b)(9).

³² See 15 U.S.C. 78o-3(b)(2).

³³ CAT NMS Plan Approval Order, 81 FR 84696, 84697.

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

As discussed in detail in File No. SR-FINRA-2024-013, FINRA believes that the proposed fees paid by the CEBBs and CEBSs in connection with Historical CAT Assessment 1 are reasonable, equitably allocated and not unfairly discriminatory. Historical CAT Cost Recovery Assessment 1 would similarly allow FINRA to recover its designated portion of Historical CAT Costs 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 Historical CAT Cost Recovery Assessment 1 would be charged to member CAT Executing Brokers in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes. The proposed fees would not cover FINRA services unrelated to the CAT, and any surplus would be used as a reserve to offset future member fees assessed by FINRA to recover its contributions, as a Plan Participant, to CAT costs.³⁴ Accordingly, FINRA believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

The reasonableness of Historical CAT Cost Recovery Assessment 1 and its consistency with the Exchange Act likewise is grounded in the facts described above and detailed in File No. SR-FINRA-2024-013. Specifically, the expenses that compose the portion of Historical CAT Costs 1 sought to be recovered through Historical CAT Cost

³⁴ See supra note 25 and accompanying text.

Recovery Assessment 1 were recognized by the SEC as appropriate for recovery pursuant to the formula approved in the CAT Funding Model (i.e., technology, legal, consulting, insurance, professional administration, and public relations costs). FINRA has determined that these costs, which are described in detail in File No. SR-FINRA-2024-013, are reasonable and it is appropriate that FINRA recover its Participant contribution to such costs through Historical CAT Cost Recovery Assessment 1. FINRA also has determined that Historical CAT Cost Recovery Assessment 1 provides for the equitable allocation of fees among FINRA members and is not unfairly discriminatory, as discussed herein.

Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1, consistent with the Exchange Act and the CAT Funding Model Approval Order.³⁵ 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.”³⁶ 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.”³⁷ The Commission further noted FINRA’s statement “that it would file a rule change to increase its member fees with the

³⁵ See supra note 11 and 24 and accompanying text.

³⁶ See CAT Funding Model Approval Order, 88 FR 62628, 62645.

³⁷ See supra note 36 at 62636-37.

filing of any proposed rule change to effectuate the Funding Model.”³⁸ The instant proposed rule change to adopt Historical CAT Cost Recovery Assessment 1 represents such a fee with respect to Historical CAT Costs 1.

Without a mechanism to recover its CAT costs, FINRA, which is unique among the Participants as a not-for-profit, national securities association, would not be able to effectively sustain its regulatory mission. Thus, consistent with the cost allocation framework put in place by the SEC-approved CAT Funding Model, whereby CEBBs and CEBSs share equal responsibility for the costs assessed directly to Industry Members based on their transactions in Eligible Securities, FINRA is seeking to recoup its designated portion of Historical CAT Costs 1 in a like manner that is fair, reasonable, and equitably allocated among FINRA’s member firms in their capacity as CAT Executing Brokers.

Historical CAT Cost Recovery Assessment 1 is designed to recover FINRA’s portion of Historical CAT Costs 1 incurred by CAT LLC associated with the development, implementation, and operation of the CAT system under the CAT NMS Plan. Thus, Historical CAT Cost Recovery Assessment 1 also 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

³⁸ See supra note 36.

initiatives, like the CAT NMS Plan, in a manner consistent with FINRA's public Financial Guiding Principles.³⁹

FINRA's approach in determining Historical CAT Cost Recovery Fee Rate 1, which is generally consistent with the approach provided for under the SEC-approved CAT Funding Model, is also reasonable and consistent with the Exchange Act. Specifically, similar to the CAT cost assessment methodology approved by the Commission, FINRA proposes to allocate equally among member CEBBs and CEBSs the portion of Participants' one-third share of Historical CAT Costs 1 previously paid by FINRA.⁴⁰ FINRA proposes to determine Historical CAT Cost Recovery Fee Rate 1 by dividing the portion of Historical Fee Rate 1 assessed to the Participants under the CAT Funding Model, i.e., \$0.00001331656564357646 per executed equivalent share, by two and rounding to six decimal places such that member CEBBs and CEBSs would each be subject to an equal fee, i.e., \$0.000007 per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange. Therefore, for each

³⁹ 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).

⁴⁰ 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.

month that Historical CAT Cost Recovery Assessment 1 is in effect, member CEBBs and CEBSs will pay a fee to FINRA based on the same transactions used to determine fees payable by CEBBs and CEBSs to CAT LLC under Historical CAT Assessment 1 for off-exchange transactions. FINRA believes that this approach is reasonable in that, as is the case with the SEC-approved CAT Funding Model, it apportions the assessed fee for members equally between the CAT Executing Broker for the buyer and the seller.⁴¹

FINRA believes that it is reasonable, appropriate, and consistent with the Exchange Act to determine Historical CAT Cost Recovery Assessment 1 by dividing Historical CAT Assessment 1, *i.e.*, \$0.000013 per executed equivalent share, by two and round to six decimal places which equals \$0.000007 such that member CEBBs and CEBSs would each be subject to an equal fee of \$0.000007 per executed equivalent share.⁴² 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. In addition, FINRA believes it is reasonable and appropriate at this time to divide Historical CAT Assessment 1 by two and round the Historical CAT Cost Recovery Assessment 1 fee rate to six decimal places. As noted above and in File No. SR-FINRA-2024-013, CAT LLC determined to use six decimal places for the Historical CAT Assessment 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

⁴¹ See supra note 40.

⁴² See supra note 23 and accompanying text.

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 Historical CAT Cost Recovery Assessment 1.

From June 2023 through May 2024, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant Participant was approximately 104.7 billion shares. Assuming similar trading volumes, under Historical CAT Cost Recovery Assessment 1, FINRA would recover its portion of the Participants' assessed share of Historical CAT Costs 1 within approximately four months.⁴³ Given the relatively modest fee rate and amount to be recovered, the expected four-month recovery period is fair, reasonable, and equitable, and will allow FINRA to recover its costs in a relatively short timeframe without imposing significant additional financial or compliance burdens on members.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(9) of the Act⁴⁴ requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the

⁴³ See supra note 24.

⁴⁴ 15 U.S.C. 78o-3(b)(9).

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

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.⁴⁵ 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.⁴⁶ Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. The Historical CAT Cost Recovery Assessment 1 fee framework is generally consistent with the fee framework of the CAT Funding Model, as approved by the SEC.

As discussed in File No. SR-FINRA-2024-013, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Cost Recovery Assessment 1, for these same reasons, is reasonable and would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

⁴⁵ See CAT Funding Model Approval Order, 88 FR 62628, 62678-86.

⁴⁶ See supra note 45.

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 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 Historical CAT Costs 1” section, FINRA is filing a proposed rule change to establish Historical CAT Cost Recovery Assessment 1 to recover its designated portion of the Participants’ share of Historical CAT Costs 1. FINRA intends that the fee framework and timeline for Historical CAT Cost Recovery Assessment 1 generally correspond to the fee framework and timeline put in place by CAT LLC with respect to Historical CAT Costs 1, as provided for in File No. SR-FINRA-2024-013 and as discussed above.

Economic Baseline

Also, as discussed above under the “FINRA’s Designated Portion of Historical CAT Costs 1” section, FINRA arrived at the fee rate for Historical CAT Cost Recovery Assessment 1 by dividing by two the fee rate assessed to the Participants in connection with the implementation of Historical CAT Costs 1, i.e., \$0.000013 per executed equivalent share, and rounding the result to six decimal places.⁴⁷

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

⁴⁷ See also File No. SR-FINRA-2024-013.

executed at least one purchase or sale of an equivalent share of an Eligible Security.⁴⁸

The top 50 MPIDs by reported 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 to recover its designated portion of the Participants' share of Historical CAT Costs 1 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 Historical CAT Assessment 1 (rounded to six decimal places) to each of the CEBB and CEBS for transactions where FINRA is the relevant Participant.⁴⁹ With regard to off-exchange transactions in Eligible Securities, generally the same members that will be assessed Historical CAT Cost Recovery Assessment 1 will also be assessed Historical CAT Assessment 1. Therefore, FINRA's proposed approach in recovering its designated portion of Historical CAT Costs 1 should reduce potential complexity in connection with the fee and billing structure for Historical CAT Cost Recovery Assessment 1. The recovery period for FINRA's portion of the share of Historical CAT Costs 1 is expected to be four months, which is shorter than the Historical Recovery

⁴⁸ 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.

⁴⁹ See CAT Funding Model Approval Order, 88 FR 62628; See also File No. SR-FINRA-2024-013.

Period for the two-thirds portion of Historical CAT Costs 1 assessed to Industry Members.⁵⁰

Where CEBBs and CEBs choose to pass Historical CAT Cost Recovery Assessment 1 on to customers, some customers could attempt to avoid incurring this temporary cost by delaying trades until after FINRA's contribution to the Participants' share of Historical CAT Costs 1 is paid. FINRA believes this is an unlikely outcome because this fee is only one part of a trader's decision regarding whether and where to trade. In addition, as the Historical CAT Cost Recovery Assessment 1 recovery period is dependent on the level of trading activity, delaying trading may only serve to lengthen the recovery period. However, traders that do trade during the recovery period may incur relatively more costs than those that trade after the recovery period has ended.

As the SEC noted in approving the revised CAT Funding Model, if FINRA passes on its portion of the CAT fee allocation to its member firms and exchanges choose not to pass through their CAT fee allocations to their members, the cost to transact off-exchange may increase relative to executing on an exchange, potentially giving exchanges a competitive advantage.⁵¹ However, we do not know whether or to what extent (or how) the exchanges may seek to recover their portion of the Historical CAT Costs 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 note that FINRA members remain subject to

⁵⁰ See File No. SR-FINRA-2024-013.

⁵¹ See supra note 49 at 62684.

regulatory obligations, such as best execution obligations, with respect to their order routing decisions.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁵² and paragraph (f)(2) of Rule 19b-4 thereunder,⁵³ in that the proposed rule change is establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization. This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act⁵⁴ and paragraph (f)(2) of Rule 19b-4 thereunder.⁵⁵ Accordingly, the proposed rule change would take effect upon filing with the Commission.

⁵² 15 U.S.C. 78s(b)(3)(A)(ii).

⁵³ 17 CFR 240.19b-4(f)(2).

⁵⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵⁵ 17 CFR 240.19b-4(f)(2).

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

Not Applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

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

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2024-014)

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A)(ii) of the 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.

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).

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

FINRA is proposing to amend FINRA Rule 6897(b) (CAT Cost Recovery Fees) to implement a historical Consolidated Audit Trail (“CAT”) recovery assessment designed to permit FINRA to recoup its contributions to recoverable historical costs of the National Market System Plan Governing the Consolidated Audit Trail incurred prior to January 1, 2022.⁵

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

⁵ Pursuant to Section 11.3(b) of the CAT NMS Plan, FINRA filed a separate proposed rule change to establish fees assessed to Industry Members, payable to Consolidated Audit Trail, LLC, related to recoverable historical CAT costs incurred prior to January 1, 2022. See File No. SR-FINRA-2024-XXX. 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).

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 Commission approved the CAT NMS Plan (“Plan” or “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

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

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”).

to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees);¹⁰ and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs.¹¹ With respect to Historical CAT Assessment fees, to date, the CAT Operating Committee has established Historical CAT Assessment 1 with regard to historical CAT costs incurred prior to January 1, 2022 (“Historical CAT Costs 1”).¹²

In light of the filing of File No. SR-FINRA-2024-013, which implements Historical CAT Assessment 1 with regard to Industry Members, FINRA is filing the instant proposed rule change to establish a fee to allow FINRA to recoup its contributions to the Participants’ assessed share of Historical CAT Costs 1 (“Historical CAT Cost Recovery Assessment 1”). Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1—amounting to \$4,391,414—in a manner consistent with the Exchange Act and the CAT Funding Model Approval Order. In the Approval Order, the Commission acknowledged that “the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act.”¹³ The Commission also noted FINRA’s statement “that it would file a rule change to increase its member fees

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

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

¹² See File No. SR-FINRA-2024-013.

¹³ CAT Funding Model Approval Order, 88 FR 62628, 62636-37.

with the filing of any proposed rule change to effectuate the Funding Model.”¹⁴ Given the approval of the CAT Funding Model and FINRA’s proposed rule change to establish Historical CAT Assessment 1 in accordance with the CAT Funding Model,¹⁵ FINRA is submitting this filing to implement Historical CAT Cost Recovery Assessment 1.¹⁶

¹⁴ 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, SEC, dated April 11, 2023 (“FINRA April 2023 Letter”) at 7 (“If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model.”); see also Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, SEC, 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.

¹⁵ See File No. SR-FINRA-2024-013.

¹⁶ The CAT NMS Plan states that “[n]o Participant will make a filing with the SEC pursuant to Section 19(b) of the Exchange Act regarding any Historical CAT Assessment until any applicable Financial Accountability Milestone described in Section 11.6 has been satisfied.” See Section 11.3(b)(iii)(B)(III) of the CAT NMS Plan. The CAT NMS Plan further states that “in all filings submitted by the Participants to the Commission under Section 19(b) of the Exchange Act, to establish or implement Post-Amendment Industry Member Fees pursuant to this Article, ... the Participants shall clearly indicate whether such fees are related to Post-Amendment Expenses incurred during Period 1, Period 2, Period 3, or Period 4.” See Section 11.6(b) of the CAT NMS Plan. As discussed in File No. SR-FINRA-2024-013, all applicable Financial Accountability Milestones for Historical CAT Assessment 1 and, by extension, Historical CAT Cost Recovery Assessment 1 – that is, Period 1, Period 2, and Period 3 of the Financial Accountability Milestones – have been satisfied. Furthermore, the costs sought to be recovered via both Historical CAT Assessment 1 and Historical CAT Cost Recovery Assessment 1 relate to Post-Amendment Expenses incurred during Periods 1, 2 and 3 of the Financial Accountability Milestones.

FINRA's Designated Portion of Historical CAT Costs 1

As discussed in File No. SR-FINRA-2024-013, which seeks to implement Historical CAT Assessment 1,¹⁷ to date, FINRA and the other Participants have agreed to pay all Past CAT Costs via loans to CAT LLC. Specifically, in the absence of an SEC-approved model establishing how the Participants were to fund the creation, implementation, and maintenance of the CAT, in 2017, FINRA and the other Participants unanimously agreed to apportion all CAT operational costs amongst the group and to fund the CAT through a series of interest-free loans. Through these loans, FINRA contributed \$13,174,243 or roughly 4.14% toward the \$318,059,819 in operating expenses composing Historical CAT Costs 1. Of that approximately \$13 million expenditure, FINRA expects to recover \$8,782,829 in loan repayments from CAT LLC following implementation of Historical CAT Assessment 1, and, under the CAT Funding Model, will forgive the remaining \$4,391,414 in loan repayments, which FINRA now seeks to recover through the implementation of Historical CAT Cost Recovery Assessment 1.¹⁸

¹⁷ Historical CAT Assessment 1 seeks to recover from CAT Executing Brokers two-thirds of Historical CAT Costs 1—the \$318,059,819 in recoverable costs incurred by CAT LLC prior to January 1, 2022.

¹⁸ FINRA notes that, as is the case with respect to Historical CAT Assessment 1 discussed in File No. SR-FINRA-2024-013, FINRA's recovery under the instant proposed rule change also would not include any portion of Excluded Costs, *i.e.*, \$48,874,937 in CAT costs incurred from November 15, 2017 through November 15, 2018, \$19,628,791 of costs paid to the the Initial Plan Processor from November 16, 2018 through February 2019 when the relationship with the Initial Plan Processor was concluded, and \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor.

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

Period	Participants' Collective Share of Historical CAT Costs 1	FINRA's Share of Historical CAT Costs 1
Pre-FAM Period (Prior to June 22, 2020)	\$41,430,243	\$1,716,067
FAM Period 1	\$2,125,781	\$88,051
FAM Period 2	\$14,325,493	\$593,371
FAM Period 3	\$48,138,423	\$1,993,925
Total (through January 1, 2022)	\$106,019,940	\$4,391,414

FINRA's recovery of these approximately \$4.4 million in Historical CAT Costs is reasonable and consistent with the Exchange Act. As discussed herein and in File No. SR-FINRA-2024-013, these costs were reasonable, appropriate and necessary for the creation, implementation and maintenance of the CAT. As stated by FINRA and permitted under the Exchange Act, FINRA will seek to recover its portion of the Participants' share of CAT costs to ensure that FINRA can fulfill its regulatory mandate and responsibilities.²⁰

¹⁹ A detailed description (including the amounts) of all costs incurred by the Participants during the pre-FAM period (prior to June 22, 2020) and during each relevant FAM period, i.e., FAM Period 1, FAM Period 2, and FAM Period 3, is provided in File No. SR-FINRA-2024-013.

²⁰ See supra note 14.

Historical CAT Cost Recovery Assessment 1

FINRA is proposing to amend Rule 6897(b) (CAT Cost Recovery Fees) to implement Historical CAT Cost Recovery Assessment 1 at this time to allow FINRA to recover its contributions to the Participants' designated one-third share of Historical CAT Costs 1.²¹ FINRA intends that the fee framework for the Historical CAT Cost Recovery Assessment 1 would generally correspond to the framework put in place by CAT LLC with respect to Historical CAT Assessment 1, as provided for in File No. SR-FINRA-2024-013. FINRA also intends that the timing and commencement of payment for Historical CAT Cost Recovery Assessment 1 generally would correspond with that established by CAT LLC with respect to Historical CAT Assessment 1, as provided for in File No. SR-FINRA-2024-013. Thus, as with Historical CAT Assessment 1, FINRA proposes that each member CAT Executing Broker shall receive its first invoice from FINRA for Historical CAT Cost Recovery Assessment 1 in November 2024, setting forth fees calculated based on October 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.²²

²¹ 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.

²² As per Section 1.1 of the Plan, for a transaction in an Eligible Security executed otherwise than on an exchange and required to be reported to an equity trade reporting facility of a registered national securities association, *i.e.*, one of FINRA’s Trade Reporting Facilities (each a “TRF”), OTC Reporting Facility (“ORF”) or Alternative Display Facility (“ADF”), the CEBB and CEBS are the Industry Members identified as the executing broker and the contra-side executing broker in the TRF/ORF/ADF transaction data event in CAT Data. In those circumstances where there is a non-Industry Member identified as the contra-side

TRF/ORF/ADF Transaction Data Event²³

#	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-2024-013, the Operating Committee has determined that Historical Fee Rate 1 is \$0.00003994969693072937 per executed equivalent share, and, under the CAT Funding Model, each of the CAT Executing Broker for the Buyer (“CEBB”), CAT Executing Broker for the Seller (“CEBS”), and relevant Participant for a given transaction in an Eligible Security would be responsible for one-third of that rate, or \$0.00001331656564357646 per executed equivalent share.²⁴ In line with this approach, with respect to FINRA’s portion of the Participants’ one-third share, FINRA is proposing that, for Historical CAT Cost Recovery Assessment 1, the Participants’ assessed fee rate would be split evenly between the CEBB and CEBS to

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.

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

²⁴ Dividing \$0.00003994969693072937 by three equals \$0.00001331656564357646. As noted in File No. SR-FINRA-2024-013, CAT LLC determined to use six decimal places for Historical CAT Assessment 1 (i.e., \$0.000013 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.

establish a Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share²⁵ for transactions where FINRA is the relevant Participant.²⁶

FINRA proposes to amend Rule 6897(b)(1)(A) to implement Historical CAT Cost Recovery Assessment 1. Proposed Rule 6897(b)(1)(A)(i) would provide that each member CAT Executing Broker shall receive its first invoice from FINRA in November 2024, setting forth the Historical CAT Cost Recovery Assessment 1 fees calculated based on transactions in October 2024, and shall receive similar invoices from FINRA for Historical CAT Cost Recovery Assessment 1 for each month thereafter in which Historical CAT Cost Recovery Assessment 1 is in effect. As provided in proposed Rule 6897(b)(1)(A)(ii), FINRA shall provide each member CAT Executing Broker with an invoice for Historical CAT Cost Recovery Assessment 1 on a monthly basis. Each monthly invoice from FINRA (separate from the invoice provide by CAT LLC with respect to Historical CAT Assessment 1) shall set forth a fee for each transaction in

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

²⁶ Dividing \$0.00001331656564357646 by two and rounding to six decimal places equals \$0.000007. FINRA believes that it is appropriate at this time to use six decimal places to maintain consistency with the approach determined by CAT LLC.

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

Further, as provided in proposed Rule 6897(b)(1)(A)(iii), Historical CAT Cost Recovery Assessment 1 will remain in effect until \$4,391,414 (FINRA's contribution to the one-third share of Historical CAT Costs 1 assessed to the Plan Participants) is collected from member CAT Executing Brokers collectively, which is estimated to be four months, but could be for a longer or shorter period of time.²⁷ FINRA will provide notice when Historical CAT Cost Recovery Assessment 1 will no longer be in effect. Proposed Rule 6897(b)(1)(A)(iv) provides that each member CAT Executing broker shall be required to pay each invoice for Historical CAT Cost Recovery Assessment 1 within 30 days of receipt of such invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated) and such payment must be made in the manner prescribed by FINRA, as set forth in Rule 6897(b)(2).

As with Historical CAT Assessment 1, since Historical CAT Cost Recovery Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Cost Recovery Assessment 1 may result in the collection of more than

²⁷ From June 1, 2023, through May 31, 2024, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant Participant was approximately 104.7 billion shares. Assuming similar 2024 trading volumes, FINRA would recover its approximately \$4.4 million portion of the Participants' assessed share of Historical CAT Costs 1 within four months. Given the fee rate and total amount to be recovered, the proposed four-month recovery period is reasonable.

FINRA's approximately \$4.4 million contribution to Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Cost Recovery Assessment 1 is in effect will be used to offset future member fees assessed by FINRA in connection with FINRA's designated CAT costs as a Plan Participant.²⁸

Beginning with the initial invoice for Historical CAT Cost Recovery Assessment 1 in November 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 Historical CAT Assessment 1 each month,²⁹ such information would provide member CAT Executing Brokers with the ability to understand the details regarding the calculation of their Historical CAT Cost Recovery Assessment 1 fees. To assist Industry Members in complying with Historical CAT Assessment 1, in November 2023 CAT LLC began making mock invoices with details for any fee liable transactions, including those executed otherwise than on an exchange, available to CAT Executing Brokers.³⁰ FINRA

²⁸ A similar approach will be taken by CAT LLC with respect to any excess money collected pursuant to Historical CAT Assessment 1 during its final month. See File No. SR-FINRA-2024-013.

²⁹ See File No. SR-FINRA-2024-013.

³⁰ As detailed in File No. SR-FINRA-2024-013, in addition to providing mock invoices, CAT LLC has worked to address Industry Member concerns regarding reconciliation of invoices for Historical CAT Assessment 1, including providing guidance and processes to assist firms in their efforts to perform reconciliations in connection with CAT invoice data. Specifically, FCAT is providing certain key elements of the trade to CAT Reporters, such as the tradeID and branch sequence, in the trade billing details accompanying CAT invoices to provide CAT

intends to likewise provide these same trade elements in the trade billing details accompanying FINRA invoices each month that Historical CAT Cost Recovery Assessment 1 is in effect.³¹

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

Executing Brokers with alternative methods for matching fee-liable transactions with their internal books and records. See File No. SR-FINRA-2024-013.

See also CAT Technical Specifications for Billing Trade Details; Trade Details Schema, <https://catnmsplan.com/sites/default/files/2024-02/02.05.24-Billing-Trade-Details-Schema.json>; CAT Billing Scenarios, Version 1.0 (November 30, 2023), <https://www.catnmsplan.com/sites/default/files/2024-01/01.12.2024-CAT-Billing-Scenarios-v1.0.pdf>.

³¹ FINRA billing methodology for Historical CAT Cost Recovery Assessment 1 is aligned with the billing methodology for CAT LLC's Historical CAT Assessment 1 under the SEC-approved CAT Funding Model. As with the Historical CAT Assessment 1 invoices to be provided by CAT LLC to Industry Members, the invoices that FINRA would provide in connection with Historical CAT Cost Recovery Assessment 1 are designed to allow member CEBBs and CEBSs to reconcile the invoiced amounts with the included underlying fee-liable transaction details each month. As noted in File No. SR-FINRA-2024-013, the CAT NMS Plan does not address the manner or extent to which CAT Executing Brokers may seek to pass on any CAT fees to their customers, and, as such, facilitating CEBBs' and CEBSs' ability to pass through Historical CAT Assessment 1 fees to their clients is outside the scope of the proposal. Likewise, facilitating CEBBs' and CEBSs' ability to pass through their Historical CAT Cost Recovery Assessment 1 fees to their clients is also outside the scope of the instant proposal.

information to reasonably track how much longer Historical CAT Cost Recovery Assessment 1 is likely to be in place.

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

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,³² 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,³³ 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.³⁴ 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

³² 15 U.S.C. 78o-3(b)(6).

³³ 15 U.S.C. 78o-3(b)(5).

³⁴ 15 U.S.C. 78o-3(b)(9).

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.³⁵

FINRA believes that this proposed rule change is consistent with the Act because it is designed to assist FINRA in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan “is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.”³⁶ 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-2024-013, FINRA believes that the proposed fees paid by the CEBBs and CEBSs in connection with Historical CAT Assessment 1 are reasonable, equitably allocated and not unfairly discriminatory. Historical CAT Cost Recovery Assessment 1 would similarly allow FINRA to recover its designated portion of Historical CAT Costs 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.

³⁵ See 15 U.S.C. 78o-3(b)(2).

³⁶ CAT NMS Plan Approval Order, 81 FR 84696, 84697.

Proposed Historical CAT Cost Recovery Assessment 1 would be charged to member CAT Executing Brokers in support of the maintenance of a consolidated audit trail for regulatory purposes. The proposed fees, therefore, are consistent with the Commission's view that regulatory fees be used for regulatory purposes. The proposed fees would not cover FINRA services unrelated to the CAT, and any surplus would be used as a reserve to offset future member fees assessed by FINRA to recover its contributions, as a Plan Participant, to CAT costs.³⁷ Accordingly, FINRA believes that the proposed fees are reasonable, equitable and not unfairly discriminatory.

The reasonableness of Historical CAT Cost Recovery Assessment 1 and its consistency with the Exchange Act likewise is grounded in the facts described above and detailed in File No. SR-FINRA-2024-013. Specifically, the expenses that compose the portion of Historical CAT Costs 1 sought to be recovered through Historical CAT Cost Recovery Assessment 1 were recognized by the SEC as appropriate for recovery pursuant to the formula approved in the CAT Funding Model (i.e., technology, legal, consulting, insurance, professional administration, and public relations costs). FINRA has determined that these costs, which are described in detail in File No. SR-FINRA-2024-013, are reasonable and it is appropriate that FINRA recover its Participant contribution to such costs through Historical CAT Cost Recovery Assessment 1. FINRA also has determined that Historical CAT Cost Recovery Assessment 1 provides for the equitable allocation of fees among FINRA members and is not unfairly discriminatory, as discussed herein.

³⁷ See supra note 28 and accompanying text.

Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1, consistent with the Exchange Act and the CAT Funding Model Approval Order.³⁸ 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.”³⁹ 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.”⁴⁰ The Commission further noted FINRA’s statement “that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.”⁴¹ The instant proposed rule change to adopt Historical CAT Cost Recovery Assessment 1 represents such a fee with respect to Historical CAT Costs 1.

Without a mechanism to recover its CAT costs, FINRA, which is unique among the Participants as a not-for-profit, national securities association, would not be able to effectively sustain its regulatory mission. Thus, consistent with the cost allocation framework put in place by the SEC-approved CAT Funding Model, whereby CEGBs and CEBSs share equal responsibility for the costs assessed directly to Industry Members based on their transactions in Eligible Securities, FINRA is seeking to recoup its

³⁸ See supra note 14 and 27 and accompanying text.

³⁹ See CAT Funding Model Approval Order, 88 FR 62628, 62645.

⁴⁰ See supra note 39 at 62636-37.

⁴¹ See supra note 39.

designated portion of Historical CAT Costs 1 in a like manner that is fair, reasonable, and equitably allocated among FINRA's member firms in their capacity as CAT Executing Brokers.

Historical CAT Cost Recovery Assessment 1 is designed to recover FINRA's portion of Historical CAT Costs 1 incurred by CAT LLC associated with the development, implementation, and operation of the CAT system under the CAT NMS Plan. Thus, Historical CAT Cost Recovery Assessment 1 also 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.⁴²

FINRA's approach in determining Historical CAT Cost Recovery Fee Rate 1, which is generally consistent with the approach provided for under the SEC-approved CAT Funding Model, is also reasonable and consistent with the Exchange Act. Specifically, similar to the CAT cost assessment methodology approved by the Commission, FINRA proposes to allocate equally among member CEBBs and CEBSs the portion of Participants' one-third share of Historical CAT Costs 1 previously paid by FINRA.⁴³ FINRA proposes to determine Historical CAT Cost Recovery Fee Rate 1 by

⁴² 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).

⁴³ 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

dividing the portion of Historical Fee Rate 1 assessed to the Participants under the CAT Funding Model, i.e., \$0.00001331656564357646 per executed equivalent share, by two and rounding to six decimal places such that member CEBBs and CEBSs would each be subject to an equal fee, i.e., \$0.000007 per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange. Therefore, for each month that Historical CAT Cost Recovery Assessment 1 is in effect, member CEBBs and CEBSs will pay a fee to FINRA based on the same transactions used to determine fees payable by CEBBs and CEBSs to CAT LLC under Historical CAT Assessment 1 for off-exchange transactions. FINRA believes that this approach is reasonable in that, as is the case with the SEC-approved CAT Funding Model, it apportions the assessed fee for members equally between the CAT Executing Broker for the buyer and the seller.⁴⁴

FINRA believes that it is reasonable, appropriate, and consistent with the Exchange Act to determine Historical CAT Cost Recovery Assessment 1 by dividing Historical CAT Assessment 1, i.e., \$0.000013 per executed equivalent share, by two and round to six decimal places which equals \$0.000007 such that member CEBBs and CEBSs would each be subject to an equal fee of \$0.000007 per executed equivalent share.⁴⁵ As discussed above, equally apportioning the fee between the CEBBs and

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.

⁴⁴ See supra note 43.

⁴⁵ See supra note 26 and accompanying text.

CEBSs is consistent with the approach to apportioning costs between Executing Brokers under the SEC-approved CAT Funding Model. In addition, FINRA believes it is reasonable and appropriate at this time to divide Historical CAT Assessment 1 by two and round the Historical CAT Cost Recovery Assessment 1 fee rate to six decimal places. As noted above and in File No. SR-FINRA-2024-013, CAT LLC determined to use six decimal places for the Historical CAT Assessment 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 Historical CAT Cost Recovery Assessment 1.

From June 2023 through May 2024, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant Participant was approximately 104.7 billion shares. Assuming similar trading volumes, under Historical CAT Cost Recovery Assessment 1, FINRA would recover its portion of the Participants' assessed share of Historical CAT Costs 1 within approximately four months.⁴⁶ Given the relatively modest fee rate and amount to be recovered, the expected four-month recovery period is fair, reasonable, and equitable, and will allow FINRA to recover its costs in a relatively short timeframe without imposing significant additional financial or compliance burdens on members.

⁴⁶ See supra note 27.

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 Act⁴⁷ requires that FINRA's rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. FINRA notes that Historical CAT Cost Recovery Assessment 1 is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan.

Furthermore, in approving the CAT Funding Model, the SEC analyzed the potential competitive impact of the CAT Funding Model, including competitive issues related to market services, trading services and regulatory services, efficiency concerns, and capital formation.⁴⁸ 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.⁴⁹ Based on this analysis, the SEC approved the CAT Funding Model as compliant with the Exchange Act. The Historical CAT Cost Recovery Assessment 1 fee framework is generally consistent with the fee framework of the CAT Funding Model, as approved by the SEC.

⁴⁷ 15 U.S.C. 78o-3(b)(9).

⁴⁸ See CAT Funding Model Approval Order, 88 FR 62628, 62678-86.

⁴⁹ See supra note 48.

As discussed in File No. SR-FINRA-2024-013, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT Assessment 1 is reasonable. Therefore, Historical CAT Cost Recovery Assessment 1, for these same reasons, is reasonable and would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

Economic Impact Assessment

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

Regulatory Need

As discussed above under the “FINRA’s Designated Portion of Historical CAT Costs 1” section, FINRA is filing a proposed rule change to establish Historical CAT Cost Recovery Assessment 1 to recover its designated portion of the Participants’ share of Historical CAT Costs 1. FINRA intends that the fee framework and timeline for Historical CAT Cost Recovery Assessment 1 generally correspond to the fee framework and timeline put in place by CAT LLC with respect to Historical CAT Costs 1, as provided for in File No. SR-FINRA-2024-013 and as discussed above.

Economic Baseline

Also, as discussed above under the “FINRA’s Designated Portion of Historical CAT Costs 1” section, FINRA arrived at the fee rate for Historical CAT Cost Recovery Assessment 1 by dividing by two the fee rate assessed to the Participants in connection

with the implementation of Historical CAT Costs 1, i.e., \$0.000013 per executed equivalent share, and rounding the result to six decimal places.⁵⁰

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.⁵¹ The top 50 MPIDs by reported 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 to recover its designated portion of the Participants' share of Historical CAT Costs 1 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 Historical CAT Assessment 1 (rounded to six decimal places) to each of the CEBS and CEBS for transactions where FINRA is the relevant Participant.⁵² With regard to off-exchange transactions in Eligible Securities, generally the same members that will be assessed Historical CAT Cost Recovery Assessment 1 will also be assessed

⁵⁰ See also File No. SR-FINRA-2024-013.

⁵¹ 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.

⁵² See CAT Funding Model Approval Order, 88 FR 62628; See also File No. SR-FINRA-2024-013.

Historical CAT Assessment 1. Therefore, FINRA's proposed approach in recovering its designated portion of Historical CAT Costs 1 should reduce potential complexity in connection with the fee and billing structure for Historical CAT Cost Recovery Assessment 1. The recovery period for FINRA's portion of the share of Historical CAT Costs 1 is expected to be four months, which is shorter than the Historical Recovery Period for the two-thirds portion of Historical CAT Costs 1 assessed to Industry Members.⁵³

Where CEBBs and CEBSs choose to pass Historical CAT Cost Recovery Assessment 1 on to customers, some customers could attempt to avoid incurring this temporary cost by delaying trades until after FINRA's contribution to the Participants' share of Historical CAT Costs 1 is paid. FINRA believes this is an unlikely outcome because this fee is only one part of a trader's decision regarding whether and where to trade. In addition, as the Historical CAT Cost Recovery Assessment 1 recovery period is dependent on the level of trading activity, delaying trading may only serve to lengthen the recovery period. However, traders that do trade during the recovery period may incur relatively more costs than those that trade after the recovery period has ended.

As the SEC noted in approving the revised CAT Funding Model, if FINRA passes on its portion of the CAT fee allocation to its member firms and exchanges choose not to pass through their CAT fee allocations to their members, the cost to transact off-exchange may increase relative to executing on an exchange, potentially giving exchanges a competitive advantage.⁵⁴ However, we do not know whether or to what extent (or how)

⁵³ See File No. SR-FINRA-2024-013.

⁵⁴ See supra note 52 at 62684.

the exchanges may seek to recover their portion of the Historical CAT Costs 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 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) of the Act⁵⁵ and paragraph (f)(2) of Rule 19b-4 thereunder.⁵⁶ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

⁵⁵ 15 U.S.C. 78s(b)(3)(A).

⁵⁶ 17 CFR 240.19b-4(f)(2).

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 File Number SR-FINRA-2024-014 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-2024-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material

that is obscene or subject to copyright protection. All submissions should refer to File Number SR-FINRA-2024-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁷

Jill M. Peterson
Assistant Secretary

⁵⁷ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

* * * * *

6000. QUOTATION, ORDER, AND TRANSACTION REPORTING FACILITIES

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6800. CONSOLIDATED AUDIT TRAIL COMPLIANCE RULE

* * * * *

6897. Consolidated Audit Trail Funding Fees

(a) No Change.

(b) No Change.

(1) No Change.

(A) [Reserved.]Historical CAT Cost Recovery Assessment 1

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

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

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

(iii) Historical CAT Cost Recovery Assessment 1 will remain in effect until \$4,391,414 (FINRA's contribution to the one-third share of Historical CAT Costs 1 assessed to the Plan Participants) is collected from member CAT Executing Brokers collectively, which is estimated to be four months, but could be for a longer or shorter period of time. FINRA will provide notice when Historical CAT Cost Recovery Assessment 1 will no longer be in effect.

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

(B) through (C) No Change.

(2) No Change.

••• **Supplementary Material:** -----

.01 No Change.

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