

provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>197</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional consideration and comment on whether the Exchange has sufficiently demonstrated that the proposed rule change is consistent with Section 6(b)(4)<sup>198</sup> of the Act, and consistent with the CAT Funding Model. Section 6(b)(4) of the Act, among other things, provides that the dues, fees, and other charges for an exchange's members be reasonable. And the CAT Funding Model, as noted above, requires, among other things, that the proposed rule change provide "sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate," including whether the Operating Committee has reasonably determined the Historical CAT Costs sought to be recovered by each Historical CAT Assessment, where the Historical CAT Costs will be Past CAT Costs minus Past CAT Costs reasonably excluded from Historical CAT Costs by the Operating Committee and whether the length of the Historical Recovery Period used in calculating each Historical Fee Rate was reasonably established by the Operating Committee.<sup>199</sup>

#### V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submission of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(4), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would

be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>200</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule changes should be approved or disapproved by March 5, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 19, 2024.

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-PEARL-2024-01 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-PEARL-2024-01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the

<sup>200</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposed rule change by an exchange. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Exchange. 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-PEARL-2024-01 and should be submitted on or before March 5, 2024. Rebuttal comments should be submitted by March 19, 2024.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>201</sup> that File No. SR-PEARL-2024-01 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>202</sup>

**Sherry R. Haywood**,  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99372; File No. SR-FINRA-2024-003]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) To Implement a Historical Consolidated Audit Trail Recovery Assessment; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

January 17, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on January 2, 2024, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "establishing or changing a due, fee or

<sup>201</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>202</sup> 17 CFR 200.30-3(a)(12), (57) and (58).

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

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

<sup>197</sup> 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See *id.*

<sup>198</sup> 15 U.S.C. 78f(b)(4).

<sup>199</sup> See CAT Funding Model Approval Order at 62660.

other charge” under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is, pursuant to Section 19(b)(3)(C) of the Act, hereby: (i) temporarily suspending the rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

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

FINRA is proposing to adopt FINRA Rule 6897(b) (CAT Cost Recovery Fees) to implement a historical Consolidated Audit Trail (“CAT”) recovery assessment through which FINRA would recoup its contributions to recoverable historical CAT costs incurred prior to January 1, 2022.<sup>5</sup>

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

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

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

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

##### 1. Purpose Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the self-regulatory

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

The CAT Funding Model provides a framework for the recovery of the costs to create, develop, and maintain the CAT, including providing a method for allocating costs to fund the CAT among Participants and Industry Members. The CAT Funding Model establishes two categories of fees: (1) CAT fees assessed by CAT LLC and payable by certain Industry Members to recover a portion of historical CAT costs previously paid by the Participants (“Historical CAT Assessment” fees);<sup>10</sup> and (2) CAT fees assessed by CAT LLC and payable by Participants and Industry Members to fund prospective CAT costs.<sup>11</sup> With respect to Historical CAT Assessment fees, to date, the CAT Operating Committee has established Historical CAT Assessment 1 with regard to historical CAT costs incurred prior to January 1, 2022 (“Historical CAT Costs 1”).<sup>12</sup>

In light of the approval of the CAT Funding Model and the filing of File No. SR-FINRA-2024-002, FINRA is similarly filing the instant proposed rule change to establish a fee to allow FINRA

to recoup its contributions to the Participants’ assessed share of Historical CAT Costs 1 (“Historical CAT Cost Recovery Assessment 1”). Historical CAT Cost Recovery Assessment 1 is designed to allow FINRA to recover its designated portion of Historical CAT Costs 1—amounting to \$4,613,250—in a manner consistent with the Exchange Act and the CAT Funding Model Approval Order. In the Approval Order, the Commission acknowledged that “the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act.”<sup>13</sup> The Commission also noted FINRA’s statement “that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.”<sup>14</sup> Given the approval of the CAT Funding Model and FINRA’s proposed rule change to establish Historical CAT Assessment 1 to effectuate the CAT Funding Model,<sup>15</sup> FINRA is submitting this filing to implement Historical CAT Cost Recovery Assessment 1.<sup>16</sup>

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

<sup>14</sup> FINRA has consistently made clear its intention to file a rule change to implement member CAT fees simultaneous with the filing of any proposed rule change to effectuate the CAT Funding Model. See Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, Commission, dated April 11, 2023 (“FINRA April 2023 Letter”) at 7 (“If the Funding Model is approved by the Commission, FINRA intends to file a rule change to increase member fees simultaneous with the filing of any proposed rule change to effectuate the Funding Model.”); see also Letter from Marcia E. Asquith, Corporate Secretary, EVP, Board and External Relations, FINRA, to Vanessa Countryman, Secretary, Commission, dated June 22, 2022 (“FINRA June 2022 Letter”) at 6 (“[G]iven FINRA’s unique nature, FINRA necessarily must seek recovery in turn for the costs it is allocated.”). FINRA also requested that if the Commission were to approve the CAT Funding Model, that it acknowledge “FINRA’s need and ability to cover CAT costs that are not recovered through contractual arrangements through member fee increases, so as not to jeopardize FINRA’s ability to carry out its critical regulatory mission.” See CAT Funding Model Approval Order, 88 FR 62628, 62645.

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

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

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

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

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

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

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

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

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

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

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

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

### FINRA's Portion of Historical CAT Costs 1

As discussed in File No. SR-FINRA-2024-002, which seeks to implement Historical CAT Assessment 1,<sup>17</sup> to date, FINRA and the other Participants have agreed to pay all Past CAT Costs via loans to CAT LLC. Specifically, in the absence of an SEC-approved model establishing how the Participants were to fund the creation, implementation, and maintenance of the CAT, in 2017,

FINRA and the other Participants unanimously agreed to apportion all CAT operational costs amongst the group and to fund the CAT through a series of interest-free loans. Through these loans, FINRA contributed \$13,839,748 or roughly 4.1% toward the \$337,688,610 in operating expenses composing Historical CAT Costs 1. Of that approximately \$13.8 million expenditure, FINRA expects to recover \$9,226,499 in loan repayments from

CAT LLC following implementation of Historical CAT Assessment 1, and, under the CAT Funding Model, will forgive the remaining \$4,613,250, which FINRA now seeks to recover through the implementation of Historical CAT Cost Recovery Assessment 1.<sup>18</sup>

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

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

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

to ensure that FINRA can fulfill its regulatory mandate and responsibilities.

### Historical CAT Cost Recovery Assessment 1

FINRA is proposing to adopt Rule 6897(b) (CAT Cost Recovery Fees) to implement Historical CAT Cost Recovery Assessment 1 at this time to allow FINRA to recover its contributions to the Participants' one-third share of Historical CAT Costs 1.<sup>21</sup> FINRA intends that the fee framework for, and the commencement of payment of, the Historical CAT Cost Recovery Assessment 1 would correspond to the framework put in place under the SEC-approved CAT Funding Model and the timing for the commencement of Historical CAT Assessment 1, as provided for in File No. SR-FINRA-

2024-002. Thus, as with Historical CAT Assessment 1, FINRA proposes that each member CAT Executing Broker shall receive its first invoice for Historical CAT Cost Recovery Assessment 1 in April 2024, setting forth fees calculated based on March 2024 transactions in Eligible Securities executed otherwise than on an exchange, as reflected in CAT Data. Consistent with the approach taken under the CAT Funding Model, FINRA proposes to equally apportion one-third of Historical Fee Rate 1 between the member CAT Executing Broker for the Buyer ("CEBB") and the member CAT Executing Broker for the Seller ("CEBS") for each transaction in Eligible Securities executed otherwise than on an exchange.<sup>22</sup> The following fields of

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

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

<sup>18</sup> FINRA notes that, as is the case with respect to Historical CAT Assessment 1 discussed in File No. SR-FINRA-2024-002, FINRA's recovery under the instant proposed rule change also would not

include any portion of Excluded Costs, *i.e.*, \$48,874,937 of costs incurred from November 15, 2017 through November 15, 2018, and \$14,749,362 of costs related to the termination of the relationship with the Initial Plan Processor. *See* CAT Funding Model Approval Order, 88 FR 62628, 62660 n704.

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

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

<sup>21</sup> In approving the CAT Funding Model, the Commission noted that it "believe[d] that FINRA's

allocation of CAT fees likely will be passed through to Industry Members." *See* CAT Funding Model Approval Order, 88 FR 62628, 62684.

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

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

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

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

As discussed in File No. SR-FINRA-2024-002, the Operating Committee has determined that Historical Fee Rate 1 is \$0.0000439371316687066 per executed equivalent share, and, under the CAT Funding Model, each of the CEBB, CEBS and relevant Participant for a given transaction in an Eligible Security would be responsible for one-third of that rate, or \$0.00001464571055623553 per executed equivalent share.<sup>24</sup> In line with this approach, with respect to FINRA's portion of the Participants' one-third share, FINRA is proposing that, for Historical CAT Cost Recovery Assessment 1, the Participants' assessed fee rate would be split evenly between the CEBB and CEBS to establish a Historical CAT Cost Recovery Fee Rate 1 of \$0.000007 per executed equivalent share<sup>25</sup> for transactions where FINRA is the relevant Participant.<sup>26</sup>

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

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

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

Historical CAT Cost Recovery Assessment 1 will be assessed for all

transactions in Eligible Securities executed otherwise than on an exchange in each month through the end of the month in which FINRA's approximately \$4.6 million contribution to the Participants' one-third share of Historical CAT Costs 1 is assessed, and then FINRA will provide notice that Historical CAT Cost Recovery Assessment 1 is no longer in effect. As with Historical CAT Assessment 1, since Historical CAT Cost Recovery Assessment 1 is a monthly fee based on transaction volume from the prior month, Historical CAT Cost Recovery Assessment 1 may result in the collection of more than FINRA's approximately \$4.6 million contribution to Historical CAT Costs 1. To the extent that occurs, any excess money collected during the final month in which Historical CAT Cost Recovery Assessment 1 is in effect will be used to offset future member fees assessed by FINRA to recover its contributions, as a Plan Participant, to CAT costs.<sup>28</sup>

FINRA also proposes to adopt Rule 6897(b)(2) to further describe the timing and manner of payment of Historical CAT Cost Recovery Assessment 1. The proposed provision requires member CAT Executing Brokers to pay Historical CAT Cost Recovery Assessment 1 on a monthly basis in the manner prescribed

event, then the Industry Member identified as the executing broker in the TRF/ORF/ADF transaction data event would be treated as, and be required to pay the fee assessed to, both the CEBB and CEBS.

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

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

<sup>25</sup> In approving the CAT Funding Model, the Commission concluded that "the use of executed equivalent share volume as the basis of the proposed cost allocation methodology is reasonable and consistent with the approach taken by the funding principles of the CAT NMS Plan." See CAT Funding Model Approval Order, 88 FR 62628, 62640. Under the CAT NMS Plan, executed equivalent shares in a transaction in Eligible Securities are reasonably counted as follows: (1)

each executed share for a transaction in NMS Stocks will be counted as one executed equivalent share; (2) each executed contract for a transaction in Listed Options will be counted based on the multiplier applicable to the specific Listed Options (*i.e.*, 100 executed equivalent shares or such other applicable multiplier); and (3) each executed share for a transaction in OTC Equity Securities shall be counted as 0.01 executed equivalent share. See Section 11.3(a)(i)(B) and 11.3(b)(i)(B) of the CAT NMS Plan.

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

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

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

by FINRA. In addition, each CAT Executing Broker would be required to pay the Historical CAT Cost Recovery Assessment 1 within 30 days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated).

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

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

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

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>30</sup> which

requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and must not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,<sup>31</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA further believes that the proposed rule change is consistent with Section 15A(b)(9) of the Act, which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.<sup>32</sup> Section 15A(b)(2) of the Act also requires that FINRA be “so organized and [have] the capacity to be able to carry out the purposes” of the Act and “to comply, and . . . to enforce compliance by its members, and persons associated with its members,” with the provisions of the Exchange Act.<sup>33</sup>

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

As discussed in detail in File No. SR-FINRA-2024-002, FINRA believes that the proposed fees paid by the CEBBs and CEBSs in connection with Historical CAT Assessment 1 are reasonable, equitably allocated and not

unfairly discriminatory. Historical CAT Cost Recovery Assessment 1 would similarly allow FINRA to recover its costs from member CAT Executing Brokers in a fair and reasonable manner, as contemplated by the Exchange Act and consistent with the CAT Funding Model Approval Order.

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

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

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

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

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

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

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

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

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

regulatory mission.”<sup>35</sup> The Commission also recognized that “the Exchange Act expressly contemplates the ability of the Participants to recoup their costs to fulfill their statutory obligations under the Exchange Act.”<sup>36</sup> The Commission further noted FINRA’s statement “that it would file a rule change to increase its member fees with the filing of any proposed rule change to effectuate the Funding Model.”<sup>37</sup> The instant proposed rule change to adopt Historical CAT Cost Recovery Assessment 1 represents such a fee with respect to Historical CAT Costs 1.

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

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

FINRA’s approach in determining Historical CAT Cost Recovery Fee Rate

1, which is consistent with the approach provided for under the SEC-approved Funding Model, is also reasonable and consistent with the Exchange Act. Specifically, similar to the CAT cost assessment methodology approved by the Commission, FINRA proposes to allocate equally among member CEBBs and CEBSS the portion of Participants’ one-third share of Historical CAT Costs 1 previously paid by FINRA.<sup>40</sup> FINRA proposes to determine Historical CAT Cost Recovery Fee Rate 1 by multiplying the portion of Historical Fee Rate 1 assessed to the Participants under the CAT Funding Model, *i.e.*, \$0.00001464571055623553 per executed equivalent share, by one-half such that member CEBBs and CEBSS would each be subject to an equal fee, *i.e.*, \$0.000007 per executed equivalent share, for each transaction in Eligible Securities executed otherwise than on an exchange. Therefore, each month that Historical CAT Cost Recovery Assessment 1 is in effect, member CEBBs and CEBSS will pay a fee to FINRA based on the same transactions used to determine fees payable by CEBBs and CEBSS to CAT LLC under Historical CAT Assessment 1 for off-exchange transactions. FINRA believes that this approach is reasonable in that, as is the case with the SEC-approved funding model, it apportions the assessed fee for members equally between the CAT Executing Brokers for the buyer and the seller.<sup>41</sup>

From December 1, 2022 through November 30, 2023, the average monthly executed equivalent share volume in Eligible Securities where FINRA is the relevant SRO was approximately 100 billion shares.<sup>42</sup> Assuming similar 2024 trading volumes, under Historical CAT Cost Recovery Assessment 1, FINRA would recover its portion of the Participants’ assessed share of Historical CAT Costs 1 within approximately four months. Given the relatively modest fee rate and amount to be recovered, the expected four-month recovery period is fair, reasonable, and

equitable, and will allow FINRA to recover its costs in a relatively short timeframe without imposing significant additional financial or compliance burdens on members. Given the expected duration of four months, Historic CAT Cost Recovery Assessment 1 is also unlikely to significantly overlap with any future CAT assessments under the CAT Funding Model or any future CAT cost recovery assessment passed through by FINRA (which would be subject to separate proposed rule changes with the Commission).

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(9) of the Act<sup>43</sup> requires that FINRA’s rules not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act. FINRA notes that Historical CAT Cost Recovery Assessment 1 is designed to assist FINRA in meeting its regulatory obligations pursuant to the Plan.

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

As discussed in File No. SR-FINRA-2024-002, each of the inputs into the calculation of Historical CAT Assessment 1 is reasonable and the resulting fee rate for Historical CAT

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

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

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

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

<sup>39</sup> See Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592, 66602–03 (October 20, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-032). As FINRA explained: “In addition to costs associated with its CAT reporting compliance program, FINRA must account for significant costs to integrate CAT data into its regulatory systems. . . . Importantly, these costs are separate from and in addition to FINRA’s obligation to contribute funding for the development, maintenance, and operation of the CAT system incurred by the CAT Plan Processor.”

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

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

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

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

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

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

Assessment 1 is reasonable. Therefore, Historical CAT Cost Recovery Assessment 1, for these same reasons, is reasonable and would not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Exchange Act.

#### Economic Impact Assessment

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

#### Regulatory Need

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

The SEC's approval order for the CAT Funding Model also recognized that Participants may choose to pass-through their one-third portion of CAT Costs to their members. FINRA intends to recover from its members FINRA's portion of the Participants' share of Historical CAT Costs 1. As stated in FINRA's comment letters, as a not-for-profit national securities association that relies primarily on regulatory fees from members for funding, FINRA must increase member fees to fund CAT costs so as not to jeopardize FINRA's ability to meet its regulatory mission.<sup>48</sup>

#### Economic Baseline

Participants have paid Historical CAT Costs 1, incurred prior to January 1, 2022, in the amount of \$337,688,610.<sup>49</sup>

Applying the SEC-approved CAT Funding Model, Industry Members are responsible for two-thirds of these costs, which amounts to \$225,125,740, and one-third of these costs is allocated to Participants, which amounts to \$112,562,870. FINRA's share of Historical CAT Costs 1 is \$4,613,250 (or approximately 4.1% of the Participants' one-third portion of Historical CAT Costs 1).

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

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

Historical CAT Cost Recovery Assessment 1 will remain in effect through the month in which FINRA recovers from FINRA member CEBBs and CEBSs collectively its contribution to the one-third share of Historical CAT Costs 1. For the purposes of estimating the recovery period for the Historical CAT Cost Recovery Assessment 1, FINRA computed an executed equivalent share volume for OTC transactions in NMS stocks and OTC equity securities for the twelve months from December 1, 2022 through November 30, 2023. Assuming similar 2024 trading volume, given an estimated executed equivalent share volume of 1,220,781,467,645 shares<sup>50</sup> and a fee

operating, CAIS operating, and change request fees), legal, consulting, insurance, professional and administration, and public relations costs.

<sup>50</sup> For the twelve months from December 1, 2022 through November 30, 2023, 1,208,689,888,387 shares of NMS stocks were reported to the TRF, and 1,209,157,925,786 shares of OTC Equity Securities

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

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

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

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

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

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

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

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

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

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

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

<sup>49</sup> As discussed above, Historical CAT Costs 1 include technology (cloud hosting services and

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

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

### 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. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>54</sup> at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>55</sup> the Commission summarily may temporarily suspend the change in the rules of an SRO 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. As discussed below, a temporary suspension of the proposed rule change is necessary or appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

When SROs file their proposed rule changes with the Commission, including fee filings like FINRA's present proposed rule change, they are required to provide a statement supporting the proposed rule change's basis under the Act and the rules and regulations thereunder applicable to the SRO.<sup>56</sup> The instructions to Form 19b-4, on which SROs file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."<sup>57</sup>

Among other things, FINRA's proposed rule change is subject to Section 15A of the Act, including Sections 15A(b)(5), (6), and (9), which require the rules of a national securities association ("association") to: (1) provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls;<sup>58</sup> (2) be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>59</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>60</sup> Further, FINRA also is subject to Section 15A(b)(2) of the Act, which 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 Act.<sup>61</sup>

In temporarily suspending FINRA's fee change, the Commission intends to further consider whether the proposed fees are consistent with the statutory requirements applicable to a national securities association under the Act. Among other things, the Commission will consider whether the proposed rule change provides for reasonable fees that satisfy the standards under the Act and the rules thereunder.<sup>62</sup>

Therefore, the Commission finds that it is necessary or appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule change.<sup>63</sup>

### IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

In addition to temporarily suspending the proposed rule change, the Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)<sup>64</sup> and 19(b)(2)(B)<sup>65</sup> of the Act to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>66</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional consideration and comment on whether FINRA has

<sup>61</sup> See 15 U.S.C. 78o-3(b)(2).

<sup>62</sup> See 15 U.S.C. 78o-3(b)(5).

<sup>63</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>64</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>65</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>66</sup> 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the SRO consents to the longer period. See *id.*

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

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

<sup>55</sup> 15 U.S.C. 78s(b)(1).

<sup>56</sup> See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

<sup>57</sup> See *id.*

<sup>58</sup> See 15 U.S.C. 78o-3(b)(5).

<sup>59</sup> See 15 U.S.C. 78o-3(b)(6).

<sup>60</sup> See 15 U.S.C. 78o-3(b)(9).



sufficiently demonstrated that the proposed rule change is consistent with Section 15A(b)(5)<sup>67</sup> of the Act, which, among other things, provides that the dues, fees, and other charges for an association's members be reasonable.

#### V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submission of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 15A(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>68</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the

proposed rule changes should be approved or disapproved by March 5, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 19, 2024.

Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-FINRA-2024-003 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-2024-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-FINRA-2024-003 and should be submitted on or before March 5, 2024. Rebuttal comments should be submitted by March 19, 2024.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>69</sup> that File No. SR-FINRA-2024-003 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>70</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2024-01251 Filed 2-12-24; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>69</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>70</sup> 17 CFR 200.30-3(a)(12), (57) and (58).

<sup>67</sup> 15 U.S.C. 78o-3(b)(5).

<sup>68</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposed rule change by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).