



October 5, 2026

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

Re: Request for Exemption from Certain Provisions of the CAT NMS Plan Related to the Recovery of Costs Incurred During Period 4 of the Financial Accountability Milestones and Request for Comment (Release No. 34-106237; File No. 4-698)

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to submit this letter to the U.S. Securities and Exchange Commission (“SEC” or “Commission”) in response to the request by the Plan Participants² in the National Market System Plan Governing the Consolidated Audit Trail (“CAT NMS Plan” or “Plan”) that the Commission grant them exemptive relief (“Request”),³ pursuant to the Commission’s authority under Section 36 of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 608(e) of Regulation NMS, from the financial consequences they face for failing to complete the requirements associated with the fourth of four separate Financial Accountability Milestones (“FAMs”) by the deadline of December 22, 2022, or within 270 days of that date.⁴

¹ SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s one million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² The 28 Participants of the CAT NMS Plan are: 24X National Exchange LLC, BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, MIAX Sapphire, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, Nasdaq Texas, LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Texas, Inc., NYSE National, Inc., and Texas Stock Exchange LLC (collectively, the “Participants,” “self-regulatory organizations,” or “SROs”).

³ Release No. 34-106237 (Sept. 1, 2026), 91 FR 56691 (Sept. 3, 2026).

⁴ Release No. 34-88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) (“2020 Amendments”).

SIFMA opposes the Request because it does not meet the standards for granting exemptive relief in Section 36 of the Exchange Act and would constitute a significant change in the Commission's deliberate policy choice reflected in the FAMs regarding the consequences of failing to timely complete the CAT. Under Section 36 of the Exchange Act, the Commission must find that the exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors, and in so doing, must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."⁵ It would also be unfair and an unprecedented use of the Commission's exemptive authority to allow the SROs to affirmatively impose more than \$260 million in FAM 4 costs on Industry Members through a Section 36 exemptive request, which is designed to relieve a requestor from Exchange Act obligations—not to allow a requestor to impose new obligations on other market participants—as the Participants seek to do in this Request.

Executive Summary

As discussed further below, the Commission should deny the Request for the following reasons:

- The Request does not meet the standards for granting Section 36 exemptive relief.
- Granting the Request would be a significant change in Commission policy in imposing the FAMs on the SROs for failing to timely complete the CAT.
- The Participants' delays in completing the FAM 4 milestone were not unforeseeable or reasonable.
- The Commission cannot grant the Request without conducting an updated analysis of the CAT funding model's⁶ impacts on efficiency, competition, and capital formation.

Background

The CAT is a regulatory system designed to allow the Commission and Participants to track order and trading activity across all equity and listed options markets in the U.S. The Commission adopted Rule 613 in July 2012 and it became effective in October 2012.⁷ In November 2016, the Commission approved the CAT NMS Plan formalizing the Participants' governance and implementation responsibilities.⁸ The CAT NMS Plan included various deadlines by which the Participants were required to complete certain CAT operational functions.⁹

Due to the significant delays by the Participants in developing and fully implementing the CAT as required by Rule 613 and the CAT NMS Plan, the Commission adopted the FAMs in the

⁵ *Cboe Futures Exchange, LLC v. SEC*, No. 21-1038 (D.C. Cir. 2023).

⁶ See, e.g., Release No. 34-105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 19, 2026).

⁷ Release No. 34-67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012).

⁸ Release No. 34-78318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016).

⁹ 2020 Amendments, 85 FR at 31323, n. 6.

2020 Amendments to increase “the Participants’ financial accountability for the timely completion of the consolidated audit trail.”¹⁰ In adopting the four FAMs, the Commission observed that “the Participants had neither met the deadlines set forth in the CAT NMS Plan nor their own proposed extensions of those deadlines.”¹¹ The Commission noted that the “proposed amendments also will help to ensure that the Participants fulfill their obligations to deliver a functional CAT on a reasonably achievable timeframe.”¹²

The milestones and dates associated with each of the four FAMs were established based on Participant projections and required the Participants to achieve a certain level of development of the CAT system by a certain target date.¹³ Collectively, the FAMs were designed to operate together to provide financial incentives for the Participants to *fully complete* the CAT and as noted, used the Participants’ projections to establish the project milestones and deadlines. The financial incentive the Commission established for each FAM was very clear. The Participants were only able to recover from Industry Members the full amounts of their CAT expenditures during the FAM periods if the Participants completed the milestone by the associated deadline. The second FAM (“FAM 2”) through the fourth (and final) FAM (“FAM 4”) allowed the Participants to recover reduced amounts of their expenditures during those periods if they achieved the relevant milestone within 270 days after the relevant target date. Following 270 days after the deadlines in FAMs 2 through 4, the Participants lost the ability to recover *any* amounts from Industry Members for Participant expenses incurred during that FAM.¹⁴

FAM 4 required the Participants to fully complete the CAT system by December 30, 2022 to be eligible to recover 100% of the FAM 4 costs from Industry Members under the CAT funding model. The milestone to be completed within FAM 4 was “Full Implementation of CAT NMS Plan Requirements,” which was defined as:

the point at which the Participants have satisfied all of their obligations to build and implement the CAT, such that all CAT system functionality required by Rule 613 and the CAT NMS Plan has been developed, successfully tested, and fully implemented at the initial Error Rates specified by Section 6.5(d)(i) or less, including functionality that efficiently permits the Participants and the

¹⁰ *Id.* at 31322.

¹¹ *Id.* at 31323.

¹² *Id.*

¹³ See Release No. 34-86901 (Sept. 9, 2019), 84 FR 48458 (Sept. 13, 2019).

¹⁴ The 2020 Amendments amended Section 11.6 of the CAT NMS Plan for FAMs 2 through 4 as follows: “the amount of recoverable CAT costs was reduced as follows: The amount of Post-Amendment Industry Member Fees that the Participants are entitled to collect for Periods 2, 3, and 4 will be reduced according to the following schedule if the Participants miss the deadline set forth for that Period: (A) By 25% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) [for FAM 4, December 30, 2022] by less than 90 days; (B) By 50% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 90 days or more, but less than 180 days; (C) By 75% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 180 days or more, but less than 270 days; and (D) **By 100% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 270 days or more.** (emphasis added).

Commission to access all CAT Data required to be stored in the Central Repository pursuant to Section 6.5(a), including Customer Account Information, Customer-ID, Customer Identifying Information, and Allocation Reports, and to analyze the full lifecycle of an order across the national market system, from order origination through order execution or order cancellation, including any related allocation information provided in an Allocation Report.

In the Request, the Participants acknowledge that they did not complete the FAM 4 milestone by the deadline of December 30, 2022 or within 270 days of that deadline. Instead, the Participants stated that they completed the FAM 4 milestone on July 15, 2024 by completing the CAT Customer and Account Information System (“CAIS”) database, more than 560 days after the target deadline (more than double the 270 additional days that would have allowed the Participants to recover a reduced amount pursuant to Section 11.6 of the CAT NMS Plan as amended by the 2020 Amendments). Recognizing their failure to meet the FAM 4 milestone by the deadline, the Participants seek in the Request to recover from Industry Members the costs they incurred in operating the CAT transactional database during the FAM 4 period and to exclude from the Request the costs associated with the CAIS database.

Discussion

As discussed below, the Commission should not depart from the policy decision it implemented in the 2020 Amendments and should deny the Request.

I. The Request is not necessary or appropriate in the public interest or consistent with the protection of investors.

As noted, Section 36 of the Exchange Act permits the Commission to provide exemptive relief from the Exchange Act or the rules thereunder “to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” Rule 608(e) of Regulation NMS similarly allows the Commission to “exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.” Given the similar findings the Commission must make to grant exemptive relief under Section 36 of the Exchange Act and Rule 608(e) of Regulation NMS, the discussion below focuses on the reasons why the Commission cannot make the necessary findings necessary to grant exemptive relief under Section 36.

The Commission cannot grant the Participants’ Request for exemptive relief because such relief is not necessary or appropriate in the public interest and would not be consistent with the protection of investors. Based on the Commission’s transparent and reasonable approach to establishing the FAMs in the 2020 Amendments, the public, and the Participants, clearly understood at the time that the Participants would not be able to recover *any* of the costs incurred in any FAM period during which they did not successfully complete *all* aspects of the milestone within 270 days after the relevant deadline. As discussed further below, the Commission chose

this path because every approach it had taken to that point to work with the SROs to complete the CAT had failed. The SEC viewed the FAMs as necessary to essentially require the Participants to complete the CAT, which the SEC said was urgently needed following years of delays.¹⁵ In establishing the milestones and deadlines, the SEC relied on the SROs' projections. Through a formal notice and comment rulemaking, the SEC made a reasoned and reasonable policy choice to impose financial incentives on the SROs to complete the CAT in a timely manner, which the SROs did not do.

The public interest and investor protection will not be served by reversing course now and allowing the SROs to retroactively recoup the costs they incurred during the FAM 4 period.¹⁶ The Participants did not complete the FAM 4 milestone until July 15, 2024, more than 560 days after the FAM 4 target date of December 30, 2022. The Request would now shift more than \$260 million of these historical costs to Industry Members, and ultimately investors trading today, years after the Participants failed to satisfy the conditions for recovering them. Rather than protecting investors, granting the Request would harm investors by shifting to them the financial consequences of the Participant's historical failure to meet FAM 4.

Granting the Request would also impose significant and unanticipated operational and financial burdens on Industry Members. Under the terms of the CAT NMS Plan, the Participants' ability to recover FAM 4 costs from Industry Members was extinguished in 2023, when the 270-day period following the FAM 4 deadline expired. The Commission subsequently approved the current funding model, and its economic analysis did not include those costs.¹⁷ Industry Members have since set budgets, pricing, and business plans in reliance on the Plan's terms and the CAT funding model as approved. They had no reasonable basis to anticipate that the Participants would now seek to revive more than \$260 million in costs that had been extinguished under the Plan. Although the proposed one-year recovery period would exacerbate that burden, a longer recovery period would not cure it. Spreading the same costs over a longer period would not change the fact that Industry Members would bear costs that the Participants forfeited by failing to timely complete FAM 4 and that Industry Members reasonably understood would never be recovered.

The public interest also will not be served by granting the Request because it will unjustly enrich the Participants. Industry Members invested significant resources to build,

¹⁵ 85 FR at 31333 ("It has been over three years since the Commission approved the CAT NMS Plan, and the need for a better audit trail system remains urgent. Accordingly, the Commission included target deadlines in the proposed amendments as one measure to reduce the likelihood of additional delays to CAT implementation. To remove these target deadlines from the proposed amendments, or to eliminate the financial incentives associated with the target deadlines, would fundamentally undercut the goal of the Commission in promulgating the proposed amendments – namely, the implementation of the CAT in a reasonable time frame.").

¹⁶ Moreover, the Participants all are for profit companies, and many of them are successful publicly listed companies. For example, in FY 2025, Nasdaq reported \$5.249 billion in net revenue and \$1.788 billion in net income. In FY 2025, NYSE's parent company ICE reported \$9.93 billion in net revenue and \$3.31 billion in net income.

¹⁷ 91 FR 13410.

modify, and maintain systems necessary to meet the implementation deadlines established by the Participants. Those investments were made in reliance on the Participants' implementation timelines and often required Industry Members to commit substantial resources to meet deadlines even as the Participants themselves struggled to satisfy the FAM requirements. As implementation extended beyond the established deadlines, Industry Members continued to incur additional costs, none of which are accounted for in the Request.

While the CAT contemplates the sharing of costs between the Participants and Industry Members, neither the CAT funding model nor the Request have properly considered the amount that Industry Members have spent to implement the CAT and their inability, unlike the Participants, to pass along all of those costs. Granting the Request would unjustly enrich the Participants by allowing them to pass along their share of CAT implementation costs to Industry Members and ultimately investors, something Industry Members have never been able to do with respect to their share of CAT implementation costs.

The Request is also inconsistent with the public interest and the protection of investors because it would allow the Participants through the Section 36 exemptive process to impose affirmative obligations – namely fees – on other market participants. SIFMA is not aware of the Section 36 exemptive process ever being used in this manner. Section 36 was designed to allow market participants to seek relief from Exchange Act obligations, subject to the appropriate Commission findings. It was not designed to allow a group of market participants to impose obligations on other market participants. Such an action should occur through a formal rulemaking process rather than the granting of exemptive relief.

The Request attempted to frame the unrecoverable FAM 4 expenses as a “penalty” that should be analyzed under the civil enforcement framework that considers “materiality or proportionality.” That framing is misplaced. The FAMs established clear conditions through Commission rulemaking on the Participants' ability to recover CAT costs from Industry Members, including the loss of any recovery if the Participants failed to complete the required milestone within 270 days of the applicable deadline. The Participants were fully aware of these consequences and had substantial time to complete the FAM 4 milestone by the deadline. As noted, prior to the SEC's adoption of the 2020 Amendments, the Participants provided the SEC with projections of the time they believed it would take to finish CAIS.¹⁸ The Participants did not fully complete the milestone by the FAM 4 deadline or within 270 days of that deadline, as required, and they should not be able to avoid the foreseeable, predictable consequences of doing so now, more than six years after the 2020 Amendments.

¹⁸ 85 FR at 31334 (“The Participants currently estimate that the CAT will be fully implemented by July 11, 2022. The amendments, as modified, therefore give the Participants approximately five months to achieve the required error rates, which the Commission believes is an appropriate amount of time to address any issues with the final phases of CAT implementation.”).

II. Granting the Request would be a significant change in Commission policy.

The SEC should not use its exemptive authority to modify the deliberate policy choice it made more than six years ago. The SEC only proposed¹⁹ and adopted the FAMs after the Participants failed to make meaningful progress on completion of the CAT over many years. The SEC carefully designed the FAMs based on the Participants' projections to incentivize the Participants to fully complete the CAT within a concrete timeline. The SEC found that the FAMs were necessary because every other approach to get the Participants to make meaningful progress in building the CAT had failed.

The Request is an attempt to rewrite that history more than six years later. The design of the FAMs, and the milestone required to be achieved within each FAM period, reflected the SEC's carefully considered policy choices based on the Participants' projections. The SEC could have taken a variety of approaches, including a component-by-component approach under which the Participants could recover costs associated with CAT functionality completed in an earlier FAM notwithstanding their failure to complete FAM 4. But it did not. Instead, the Commission expressly conditioned recovery of FAM 4 costs on "Full Implementation of CAT NMS Plan Requirements." The Commission should not now adopt the previously rejected piecemeal approach contemplated by the Request retroactively through its Section 36 authority.

There is a more fundamental problem with the Participants' Request. Under the terms of the CAT NMS Plan, once the Participants failed to complete FAM 4 within 270 days of the December 30, 2022 deadline, the amount of FAM 4 costs recoverable from Industry Members was reduced by 100%. The Participants now seek to use exemptive relief to retroactively restore an ability to recover those costs that had already been extinguished under the Plan. Doing so would constitute impermissible retroactive agency action absent Congressional authorization. The Commission's reference in the 2020 Amendments to the availability of exemptive relief does not resolve that problem. The Commission could have exercised that authority before the applicable deadline expired; it did not do so.

The fact that the CAT transactional database was operational and useful to regulators for some purposes during the FAM 4 period does not alter the condition the SEC established for recovery of FAM 4 costs. The SEC plainly stated that collectively, the FAMs were "*designed to help facilitate the implementation of the CAT functions in a manner that enables the Commission and other regulators to conduct the improved market surveillance envisioned by the Commission when it adopted Rule 613—the ultimate goal of this project.*"²⁰ To achieve the stated "ultimate goal," the Commission found it necessary to remove the Participants' funding authority to recover CAT costs during any of the FAM periods for which the Participants did not complete the relevant milestone within the associated deadline. Specifically, the Commission stated:

¹⁹ 84 FR 48458 (Sept. 13, 2019).

²⁰ *Id.* at 48470.

*In light of the Participants' delays in implementation of the CAT NMS Plan, the Commission does not believe it would be reasonable for the Participants to exercise their funding authority under the CAT NMS Plan or the Exchange Act if the Participants do not meet the target deadlines specified by the amendments.*²¹

Moreover, in adopting the FAMs, the Commission was extremely clear about the consequences for missing each target deadline:

*If the Participants meet the target deadline specified for each Financial Accountability Milestone, the terms of the proposed amendments would entitle them to collect the full amount of any related Post-Amendment Industry Member Fees. However, if the Participants do not meet the date specified for each Financial Accountability Milestone, the proposed amendments would reduce the amount of related Post-Amendment Industry Member Fees that the Participants may recover. . . . If the Participants miss the target deadlines for the remaining three Financial Accountability Milestones, the amount of related Post-Amendment Industry Member Fees that the Participants will be entitled to recover for each Financial Accountability Milestone will immediately be reduced by 25% and then further reduced by 25% for every 90 days by which the Participants miss the target deadline.*²²

The SEC did not adopt the FAMs without careful deliberation, including consideration of public comments and a full economic analysis. The SEC's deliberate approach also accounted for potential delays in the Participants' ability to complete the milestone within the target deadline for any reason by allowing the Participants to recover reduced amounts if they missed the target deadlines for FAMs 2 through 4 by up to 270 days. This approach should not be set aside through a Section 36 exemptive relief request.

III. The Participants' delays in completing the FAM 4 milestone were not unforeseeable or reasonable.

In the Request, the Participants rely on the SEC's reference in the 2020 Amendments to its "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone" and its belief "that this ability, in particular, should alleviate the Participants' concerns regarding the potential impact of *unforeseeable or reasonable delays*."²³ However, the SEC also clearly expressed its desire not to "allow further delays to occur without consequence."²⁴

²¹ 85 FR at 31330.

²² *Id.* at 31329.

²³ *Id.* at 31335 (emphasis added).

²⁴ *Id.* The SEC's full statement in this section of the 2020 Amendments was: "Although it is sensitive to the concerns expressed by commenters, the Commission is adopting a mechanism that would not allow further delays to occur without consequence. The Participants have already missed the Commission-approved deadlines set forth in the CAT NMS Plan. The Participants are responsible for timely CAT implementation, including selecting and managing the Plan Processor, and the process is fundamentally within their control. Delays to CAT implementation

In the Request, the Participants did not argue or demonstrate that the significant delays in completing the FAM 4 requirements were unforeseeable or reasonable. Instead, they argue that what was unforeseeable was the magnitude of the financial consequences resulting from that delay.²⁵ That is not a valid basis for the Commission to grant exemptive relief from the full consequences of the FAM 4 requirements. It would be inequitable and we believe an unprecedented use of its exemptive authority for the Commission, more than six years after the 2020 Amendments and nearly four years after the end of the Commission's FAM 4 deadline, to hold Industry Members responsible for the Participants' failure to complete the FAM 4 milestone by the deadline because the Participants incurred higher than expected CAT costs during the FAM 4 period.

IV. The Commission cannot grant the Request without conducting an updated analysis of the CAT funding model's impacts on efficiency, competition, and capital formation.

The Participants also request an exemption from the current CAT NMS Plan requirement that a Historical Recovery Period used to collect Historical CAT Costs may not be less than 24 months or more than five years.²⁶ Because the current funding model expires on March 31, 2028, the Participants seek to compress the recovery of approximately \$260.6 million in additional FAM 4 costs into a one-year period.

SIFMA's objection to the Request does not depend on the length of the recovery period. For the reasons discussed in Sections I through III, the Participants should not be permitted to recover FAM 4 costs from Industry Members over any period, and a longer recovery period would not cure the Request's fundamental deficiencies. The proposed one-year recovery period, however, would compound the harm to Industry Members and investors and raises additional concerns, as discussed below.

The Participants' proposed one-year recovery period would depart from important elements of the funding model the Commission approved only months ago. In approving the current funding model, the Commission concluded that a recovery period of between two and five years would spread Historical CAT Costs over an "appropriate amount of time." The Participants now seek to cut that minimum period in half—not because of any change in the Commission's assessment of an appropriate recovery period, but because a longer period would

have serious consequences; they prevent regulators and market participants from reaping the regulatory benefits of the CAT, as well as potentially increase costs for Industry Members attempting to comply with the Participants' projected timelines. However, the Commission has the authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone. The Commission believes that this ability, in particular, should alleviate the Participants' concerns regarding the potential impact of unforeseeable or reasonable delays."

²⁵ Request, at 10-11 ("The unforeseeable nature of an excessively large reduction in recoverable costs resulting from the delay in certain limited aspects of one part of the CAT system is exactly the type of circumstance that warrants the use of the Commission's exemptive authority.").

²⁶ CAT NMS Plan Section 11(b)(i)(D)(I).

extend beyond the March 31, 2028 expiration of the current funding model. The Commission also relied on that expiration date in assessing the funding model's economic effects, explaining that "[b]y being limited to a given time period, the effects will not be as large economically as they would be if not time limited."²⁷ Permitting the Participants to compress additional historical costs into the period before that expiration would increase the economic effects occurring during the very period the Commission analyzed.

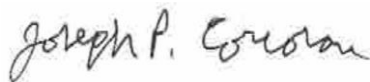
The SEC's approval of the current funding model included an analysis of its effects on efficiency, competition, and capital formation, as required by Rule 613(a)(5). But that analysis did not include the approximately \$260.6 million in additional FAM 4 costs the Participants now seek to recover from Industry Members, much less analyze the effects of recovering those costs over a compressed one-year period.²⁸ Accordingly, even if the Commission were to approve the Request in contravention of the Section 36 requirements, it could not do so without conducting a new assessment of the funding model's impacts on efficiency, competition, and capital formation that includes these new amounts passed on to Industry Members over a compressed period.

* * *

Conclusion

SIFMA appreciates the opportunity to respond to the SEC's publication of the Request. For the reasons discussed above, SIFMA opposes the Request and urges the SEC to deny it. If you have any questions or need any additional information, please contact Katie Kolchin, Joseph Corcoran, or Gerald O'Hara at 202-962-7300.

Sincerely,



Joseph Corcoran
Managing Director and Associate
General Counsel
SIFMA



Gerald O'Hara
Vice President and
Assistant General Counsel
SIFMA

²⁷ 91 FR at 13458.

²⁸ Indeed, the Commission expressly declined in the 2026 Funding Order to address the potential recovery of FAM 4 costs. The economic analysis supporting that Order therefore cannot supply the analysis necessary to support the materially different costs the Participants now seek to impose.