

October 5, 2026

Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549–1090

**Re: Notice of Request for Exemption from Financial Accountability Milestone 4
(File No. 4-698)**

On August 11, 2026, Consolidated Audit Trail (CAT LLC) requested exemptive relief from core aspects of the CAT NMS Plan’s Financial Accountability Milestones (FAMs). That request asks the SEC to do something remarkable: retroactively reverse decisions it made for carefully considered reasons, extinguish rights it specifically created for broker-dealers and their customers, and saddle the investing public with over \$260 million in costs—all to bail out the for-profit self-regulatory organizations (SROs) from the consequences of their own failures. Having broken the law, the SROs now seek to penalize innocent bystanders. That is not what exemptive relief is for.

After years of blown deadlines, broken promises, and wholesale mismanagement of the CAT project by the SROs, the Commission in 2020 created the FAMs to impose serious financial consequences on the SROs for further delays. The SROs failed again. As their request admits, full CAT implementation was not completed until July 15, 2024—over 560 days after the FAM 4 deadline, and nearly 300 days beyond the point at which the SROs’ ability to recover Period 4 costs was reduced to zero under SEC rules.

The SROs do not (and cannot) claim those delays were outside their control. After all, they were the ones tasked with developing the CAT and meeting the FAMs. Yet rather than accept the consequences designed specifically for this situation, the SROs ask the Commission to go back on its word to broker-dealers and the investing public and retroactively bless the delays it rejected when creating the FAMs in the first place. And they want all of this right now, urging the SEC to let them hit broker-dealers and the public with all of the Period 4 costs on a compressed, one-year timetable rather than the extended two-to-five year timetable set out in the 2026 Funding Order.

The Commission should deny the request in its entirety. For starters, the SROs seek unlawfully retroactive agency action by asking the SEC to resuscitate a potential liability that FAM 4 has already extinguished. And even if the SEC somehow had the authority to take that step, the SROs’ request would still contradict the core policies underlying the FAMs, which aimed to spur timely development of a complete CAT system and hold the SROs accountable for a process that was fundamentally within their control. None of the SROs’ reasons for departing from those policies holds water. The request is also inconsistent with the public interest and protection of investors, because its sole effect would be to saddle the innocent investing public with over \$260 million in unexpected costs from the for-profit SROs’ ledgers. The request also would require an economic analysis the SEC has never performed, having sidestepped all Period 4 cost issues in the 2026 Funding Order—an Order that forecloses the SROs’ proposal to compress Period 4 cost recovery into a single year in any event. In short, there is no reason for the SEC to try to override both the FAMs and the most recent Funding Order and grant the SROs’ request now.

I. The SROs seek unlawful retroactive agency action.

To start, the Commission cannot grant the requested relief because it would impose millions of dollars in retroactive obligations on broker-dealers and the investing public. The request does not merely seek *to relieve* the SROs of their burdens under FAM 4, but *to shift* those burdens to someone else—namely, broker-dealers and their investor customers. And critically, it would do so by reviving a potential liability that FAM 4 has already extinguished. Under the clear terms of the FAMs, broker-dealers currently are not liable for any portion of Period 4 costs because the SROs admittedly failed to fully implement the CAT NMS Plan within 270 days of December 30, 2022. 85 Fed. Reg. at 31348. The SROs do not and cannot contest that those deadlines came and went without full CAT implementation. Request 3, 7. As the Commission explained when adopting the FAMs, they operated “immediately” to “reduce[]” the amount of Period 4 costs recoverable by the SROs with no additional steps needed. 85 Fed. Reg. at 31329. Thus, as of September 26, 2023, the SROs’ right to charge broker-dealers fees for Period 4 costs was extinguished, and broker-dealers’ right to be free from Period 4 costs was established.

By eliminating that protection, the SROs’ proposal would “increase” broker-dealers’ “liability for past conduct” and “impose new duties with respect to transactions already completed,” *Bartko v. SEC*, 845 F.3d 1217, 1223 (D.C. Cir. 2017) (cleaned up)—thereby retroactively expanding the “extent of” broker-dealers’ “liability.” *Landgraf v. USI Film Prods.*, 511 U.S. 244, 283-84 (1994); *see id.* at 269-70 (directing courts to determine retroactive effect by examining whether a law attaches new legal consequences to events completed before its enactment). Indeed, the proposal would destroy the concrete financial reliance interests of broker-dealers who understood, based on the clear terms of the FAMs, that these liabilities were extinguished and who budgeted accordingly.

Before the Commission can topple these industry-wide reliance interests, it must identify a clear delegation of authority to do so. After all, laws “will not be construed to have retroactive effect unless their language requires this result.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988); *see United States v. Magnolia Petroleum Co.*, 276 U.S. 160, 162-63 (1928). To overcome the presumption against retroactivity, a statute must have “‘clear, strong, and imperative’ language requiring retroactive application.” *Landgraf*, 511 U.S. at 270.

None exists here. Section 36—the SROs’ sole statutory hook for their requested relief—does not “expressly authorize” the Commission to establish or increase liabilities retroactively. *Koch v. SEC*, 793 F.3d 147, 158 (D.C. Cir. 2015). Giving the Commission discretion to “exempt” one party from an obligation to pay does not “clear[ly]” allow it to retroactively *impose* that obligation on another. In other words, even if the Commission could retroactively provide that the SROs need not pay certain costs themselves, it could not *shift* those costs onto broker-dealers years later.

The Commission has never used its exemptive authority that way in other contexts, so declining to do so here would not interfere with Section 36’s ordinary uses. Most exemptive relief provides procedural benefits or prospective relief to applicants that do not diminish any previous rights or increase any liabilities of innocent third parties, much less impose millions of dollars in retroactive liabilities on them. *See, e.g.*, 90 Fed. Reg. 9642, 9644-45 (2025) (exempting SROs and broker-dealers from certain requirements). The Commission may therefore waive or exempt an applicant from a historical liability or procedural obligation owed *to the SEC*. *See, e.g.*, 77 Fed.

Reg. 74891 (2012) (exempting companies from certain past-due disclosure obligations in light of Hurricane Sandy, which had made disclosures impracticable). So here, for instance, the Commission could itself pay for the \$260 million-plus the SROs seek to offload on broker-dealers, by taking these costs onto its own budget. Alternatively, it could have granted exemptive relief from FAM 4 before it took effect and extinguished the SROs' right to recover. *See* 85 Fed. Reg. at 31335 (noting possibility of exemptive relief while adopting FAMs). But what the Commission cannot do is resurrect the SROs' ability to recover Period 4 costs from broker-dealers now that this liability has been extinguished for years. The SROs' request is therefore dead on arrival.

II. The SROs' request contradicts the core policies underlying the FAMs.

Even if the Commission *could* grant this exemption, it *should* not do so. The SROs seek relief from the consequences of their actions by asking the Commission to go back on the policies it adopted when creating the FAMs and instead give them partial credit for supposedly building *some* of the CAT on time, destroying broker-dealers' and investors' reliance interests in the process. There is no basis for doing so. The Commission created the FAMs to spur timely creation of a *complete* CAT system, and the SROs admittedly failed to deliver.

A. The Commission created the FAMs to incentivize timely delivery and impose serious consequences after years of SRO delays.

From the beginning, the FAMs were designed to impose serious consequences on the SROs for any failure to implement the CAT in its entirety. The SROs conveniently ignore that history. *See* Request 5-7. But the events that led to the FAMs demonstrate that they are meant to be unyielding rules, not, as the SROs would have it, imprecise guidelines to be ignored whenever the SROs later deem them "inequitable." *Id.* at 10. The Commission's order adopting the FAMs confirms as much: just as delays in CAT implementation have "serious consequences" for other regulators, so should they for the SROs. 85 Fed. Reg. at 31335.

To start, the Commission proposed the FAMs only after years of blown deadlines and SRO mismanagement. The SROs first set their own deadlines in the CAT NMS Plan, committing to choose a plan processor and to begin reporting their own data to the central repository by November 15, 2017. 84 Fed. Reg. 48458, 48459 (2019). The SROs were able to select Thesys Technologies LLC as the plan processor in a timely manner. *Id.* But that was all they could manage. Two days before the November 15, 2017 deadline, "having previously provided assurances as late as the summer of 2017 that initial data reporting would commence on schedule and in accordance with the CAT NMS Plan," the SROs told the Commission that they would not meet the deadline and sought exemptive relief. *Id.* Chairman Clayton refused to support issuance of that relief on the SROs' proposed terms. *Id.*

After six more months passed with inadequate progress, the Commission requested a master plan from the SROs with a timeline for development and completion of the CAT. *Id.* at 48460. The SROs' plan committed to SRO data reporting by November 15, 2018. *Id.* But when that date arrived, the CAT still lacked all the functionality required by the CAT NMS Plan. *Id.* The SROs stated that Thesys would complete all the necessary functionality by March 31, 2019. *Id.* By late February 2019, however, the SROs had dropped Thesys and selected FINRA as the plan processor. *Id.* The required functionality was still not completed by March 31, 2019. *Id.* In April 2019, the

SROs then announced yet another implementation timeline extending beyond the requirements of the CAT NMS Plan, the SROs' master plan, and the SROs' 2017 request for exemptive relief. *Id.*

Given that history of foot dragging, the Commission created the FAMs to impose serious consequences on the SROs for any further delays. The SEC specifically considered and rejected calls for a "holistic assessment of the [SROs'] management of CAT implementation," explaining that the Commission needed a mechanism designed not only "to achieve CAT implementation, but, more specifically, to achieve CAT implementation in a timely manner." 85 Fed. Reg. at 31333.

Firm financial consequences were the core of that project. Eliminating them, the SEC explained, "would fundamentally undercut the goal of the Commission in promulgating the proposed amendments—namely, the implementation of the CAT in a reasonable time frame." *Id.* Nor would "a more flexible approach" requested by the SROs suffice. *Id.* at 31335. The SROs had already squandered years of flexibility, so the Commission chose a mechanism that "would not allow further delays to occur without consequence." *Id.* After all, the Commission found, the implementation of the CAT "is fundamentally within [the SROs'] control." *Id.* The Commission therefore concluded it would not be "reasonable" under Sections 6(b)(4) and 15A(b)(5) of the Exchange Act for the SROs to impose CAT costs on broker-dealers if they did "not meet the target deadlines specified by the amendments." *Id.* at 31330.

B. The SROs' justifications for departing from that policy all fail.

The SROs' request is fundamentally an appeal to the Commission to reverse the policies it adopted when creating the FAMs. When adopting the FAMs, the Commission provided reasonable step-downs in the SROs' ability to recover Period 4 costs from broker-dealers, with shorter delays resulting in smaller financial consequences. 85 Fed. Reg. at 31348. The SROs blew past them all. They admit they failed to achieve full implementation of the CAT NMS Plan even within 270 days after the FAM 4 deadline. Request 3, 7. The Commission decided in 2020 that such a failure should result in a 100% reduction of any Period 4 costs the SROs might otherwise impose on broker-dealers, as those fees would not be "reasonable" under the Exchange Act. 85 Fed. Reg. at 31330, 31349. The Commission based that view on both the SROs' track record of failure, and the fact that implementation of the CAT is "fundamentally within [the SROs'] control." *Id.* at 31335.

Here, the SROs' request is conspicuously short on detail about what "technical aspects" of the Customer and Account Information System (CAIS) database were delayed and why. Request 3, 9-10, 12. But nowhere do the SROs claim those delays were anyone's fault but their own. That is because the CAIS delays were caused by their poor planning and design choices. So where the Commission already chose "consequence[s]" for exactly that sort of failure, 85 Fed. Reg. at 31335, the SROs now ask (again) for "a more flexible approach," Request 12 (quoting 85 Fed. Reg. at 31335 n.168). But the SROs already used up the flexibility the Commission gave them by blowing deadline after deadline between 2017 and 2020. 84 Fed. Reg. at 48459-60. And none of the reasons they now offer for departing from the policies underlying the FAMs justifies such an about-face.

First, the SROs argue that because the CAT's separate transactional database was completed on time, it would be unfair to deny recovery of Period 4 costs attributable to that portion of the project. Request 3-4, 9-10. But that misses the point. As the SROs admit, completion of the transactional database was *already* required by the first three FAMs. Request 6; 85 Fed. Reg. at 31329

(setting FAM 3 as “Full Availability and Regulatory Utilization of Transactional Database Functionality”). So for FAM 4, the Commission had to decide whether the Plan’s *remaining* elements were significant enough to make their timely completion the basis for recovery of Period 4 costs.

They were. The Commission determined that each aspect of the Plan was “important” for market oversight, including its CAIS elements. 84 Fed. Reg. at 48470. In fact, it singled out the CAIS elements in particular as “critical to achieving the full regulatory benefit of the CAT.” *Id.* So the “central premise underlying the FAMs” was not simply the timely creation of a *transactional* database, Request 10, but the *entire* “market surveillance envisioned by the Commission when it adopted Rule 613—the ultimate goal of this project.” 84 Fed. Reg. at 48470.

By the same token, the fact that the Commission *used* the transactional database during Period 4 (Request 9-10) changes nothing. Again, FAMs 1 through 3 *already* required completion of the database. 85 Fed. Reg. at 31329. And the SROs are continuing to recover the full two-thirds of their development costs for that period under the 2026 Funding Order. The point of FAM 4 was to spur timely completion of the remaining aspects of the Plan—and particularly its CAIS elements—by conditioning recovery of Period 4 costs on meeting that goal. Yet under the SROs’ logic, they could have delayed implementation of every other part of the Plan for years on end and still have recovered every penny of Period 4 costs linked to the transactional database. That would gut FAM 4.

The SROs’ approach also makes no sense in light of the history that led to the FAMs, where the SROs’ piecemeal compliance was part of the problem. *See* 84 Fed. Reg. at 48460 (explaining SROs began reporting data to central repository in November 2018, but system “did not include all of the functionality required by the CAT NMS Plan”). The Commission rejected a partial-credit approach to FAM 4 and Period 4 costs in 2020, and it should stick with that policy choice here.

Second, the SROs contend that “imposing a \$326 million penalty” for delayed completion of the CAIS system while the transactional database was fully operational would be “excessive and grossly disproportionate.” Request 10. There is a lot wrong with that statement. For starters, preventing the SROs from imposing sunk costs on broker-dealers and their investor customers under the FAMs is not a “penalty.” It is the Commission-mandated consequence of the SROs’ own failures. The SROs are ultimately responsible for developing the CAT, and both the CAT NMS Plan and the Exchange Act place limits on when and how much of those development costs they may offload onto the investing public. The FAMs set some of those limits. The Commission has already determined it would not be “reasonable” under Sections 6(b)(4) and 15A(b)(5) for the SROs to impose CAT development costs on broker-dealers if they did “not meet the target deadlines specified.” 85 Fed. Reg. at 31330. And the FAMs have already foreclosed the SROs’ ability to recover Period 4 costs by operation of law. *See id.* at 31329 (explaining that the amount SROs can recover under FAMs “will immediately be reduced”). The SROs’ appeals to “materiality or proportionality” principles applied to penalties imposed through SEC enforcement actions are therefore entirely misplaced. Request 4, 10. The only ones who stand to be (unfairly) penalized here are the broker-dealers the SROs wish to saddle with a new \$260 million-plus tax liability.

Relatedly, there was nothing “unforeseen” about the “magnitude” of the consequences of missing the FAM 4 deadline by more than 560 days. Request 10. To the contrary, the Commission based the December 30, 2022 deadline on the SROs’ *own* projections for full CAT implementation,

and even then gave them “an additional five months.” 84 Fed. Reg. at 48470. The FAMs were then crystal clear that the SROs’ ability to recover Period 4 costs would be zeroed out if they did not achieve full implementation by September 26, 2023—270 days after the deadline. 85 Fed. Reg. at 31349.

The SROs now bemoan the size of their unrecoverable Period 4 costs, but they knew full well those costs would increase as their delays in full implementation necessarily extended the length of Period 4 itself. And as the ones operating the CAT, the SROs became immediately aware of any unexpected costs associated with operating the transactional database as those costs were incurred. The SROs may not *like* the consequences of their delays, but they should not be *surprised* by them.

Nor does it matter that the CAT NMS Plan no longer requires the CAIS system to collect and track personally identifiable information (PII). The system still tracks CCIDs, and when removing the PII requirements, the Commission expressly declined “to eliminate the CAIS system” as some commenters suggested. 91 Fed. Reg. 2164, 2169 (2026). Here, too, the SROs cannot bring themselves to say that the recent CAIS amendments eliminated every feature involved in the SROs’ delays. Moreover, the SROs’ delays in completing the CAIS system created “increased costs for Industry Members,” just as the Commission predicted. 85 Fed. Reg. at 31323. Those costs were incurred regardless of any revisions to the CAIS system after the fact. And when it comes to the portions of the CAIS system that were later revised, broker-dealers have even more sunk costs than the SROs. What the SROs are seeking here is not “fair[ness],” but a windfall. Request 10.

Third, the SROs note that the Commission referred to “its general exemptive authority” in its FAM order, which they contend “suggests the availability of exemptive relief was a material consideration in adopting the FAMs.” *Id.* But the SROs’ delays look nothing like what the Commission had in mind when it mentioned its ability to grant exemptive relief.

Specifically, in the relevant portion of the FAM order, the Commission responded to multiple commenters’ (including the SROs’) requests for “a more flexible approach” because they believed “factors outside of the [SROs’] control” could cause delays. 85 Fed. Reg. at 31335 & n.168; *see id.* at 31335 (noting commenter requested formal delay mechanism to account for “factors beyond anyone’s control”). The Commission reiterated that CAT implementation, by contrast, “is fundamentally within [the SROs’] control.” *Id.* It was thus in response to that main concern—delays *outside* the SROs’ control—that the Commission reasoned its ability to grant exemptive relief “should alleviate the [SROs’] concerns regarding the potential impact of unforeseeable or reasonable delays.” *Id.*

That, however, does not help the SROs here. The SROs’ delays in implementing the CAIS system were neither unforeseeable nor outside their control. Instead, they were the product of the SROs’ own poor planning and vendor and design choices. Indeed, the SROs barely argue otherwise. They at one point label the delays “unforeseeable and reasonable” but do not attempt to explain why. Request 5. They later drop that pretense and instead invoke the “unforeseeable nature of an excessively large reduction in recoverable costs from the delay in certain limited aspects of one part of the CAT system.” Request 10-11. But the Commission has never suggested exemptive relief would be appropriate because the *consequences* for failing to satisfy the FAMs are significant or unexpected. To the contrary, those consequences were the entire point of the FAMs. And in any event, those consequences have been crystal clear from day one: Failure to achieve full

implementation of the CAT plan—including all CAIS functionality—over 270 days after the December 30, 2022 deadline would reduce the SROs’ ability to recover Period 4 costs from broker-dealers by 100%. 85 Fed. Reg. at 31348. There is nothing unforeseeable or unreasonable about those consequences for the SROs’ own shortcomings.

Fourth, the SROs contend that the CAT NMS Plan contemplates SROs and broker-dealers sharing the costs of the CAT and that broker-dealers benefitted from the transactional database throughout Period 4. Request 12-13. But even if all that were true, it would be beside the point. In proposing the FAMS, the Commission explained that the Plan’s cost-sharing premise “was based on the Commission’s expectation” that the SROs “would be complying with the CAT NMS Plan, which required the implementation of certain CAT functionality by the dates set forth in the CAT NMS Plan.” 84 Fed. Reg. at 48466. The Commission therefore concluded that imposing broker-dealer fees for CAT development costs would *not* be “reasonable” under the Exchange Act “if the [SROs] do not meet the target deadlines specified by the [FAMS].” 85 Fed. Reg. at 31330. Broker-dealers are therefore not being “unjustly enriched” (Request 12) by the SROs’ inability to charge fees the Commission already decided would be unreasonable under the Act.

In any event, the notion that broker-dealers have received all the benefits of the CAT during Period 4 without any of the burdens blinks reality. For the CAIS system in particular, broker-dealers have spent far more than the SROs in building the necessary customer-database reporting infrastructure. And as the Commission predicted, the SROs’ delays have “increase[d] costs for Industry Members attempting to comply with the [SROs’] projected timelines.” 85 Fed. Reg. at 31335. The SROs’ request accounts for none of those sunk costs on the broker-dealer side. There is nothing inequitable or inconsistent with “the specific intent expressed” in the CAT NMS Plan in FAM 4’s application to the SROs’ delays.

III. The SROs’ request conflicts with the public interest and protection of investors.

The request also runs into the fact that the Commission may grant exemptive relief to the SROs only “to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.” 15 U.S.C. § 78mm(a)(1); *see* 17 C.F.R. § 242.608(e) (allowing for exemptions from Rule 608’s requirements if the Commission determines they are, *inter alia*, “consistent with the public interest” and “the protection of investors”). Failure to adequately consider those requirements is grounds for invalidating an order granting exemptive relief. *See Choe Futures Exch., LLC v. SEC*, 77 F.4th 971, 980-81 (D.C. Cir. 2023). Here, the SROs’ request is flatly contrary to the public interest and the protection of investors.

The effect of the SROs’ requested exemption on the investing public would be to saddle them with over \$260 million in unexpected CAT taxes. Request 5. That would not relieve regulated entities or the investors they serve of any requirement that might yield offsetting savings in the future. Nor would it provide the public with benefits to outweigh increased transaction costs, like when the Commission attaches conditions to exemptive relief that indirectly increase future costs but purport to protect investors. *See Chamber of Com. of U.S. v. SEC*, 412 F.3d 133, 137, 143 (D.C. Cir. 2005) (reviewing board independence conditions imposed under exemptive authority in § 80a-6(c)); *see also XY Plan. Network, LLC v. SEC*, 963 F.3d 244, 256 (2d Cir. 2020) (reviewing Regulation Best Interest adopted under § 913(f) of Dodd-Frank Act). It would not even “exempt” the SROs from any current or future obligation under the CAT NMS Plan. The only thing it would

accomplish is a *shift* of hundreds of millions of dollars incurred by those responsible for delays in implementing the Plan to those who were not.

And it would do so after the Commission assured broker-dealers and their customers they would *not* have to shoulder Period 4 costs if the SROs failed to achieve full CAT implementation within 270 days of the December 30, 2022 deadline, and that exact condition then occurred. 85 Fed. Reg. at 31348. Broker-dealers and investors are innocent bystanders in the SROs' long-running conflict with the SEC over timely implementation of the CAT. It cannot be in the public interest to change the rules of the road six years later just to stick the investing public with hundreds of millions in costs from the for-profit SROs' books.

Citadel Securities is unaware of any previous use of the Commission's exemptive authority in other areas to achieve pure *post hoc* cost-shifting from regulators to the investing public. The Commission should not follow the SROs down that path now. If anything, granting the SROs' request will undercut potential benefits to the public in the future. When adopting the FAMs, the Commission determined they served the public interest because delays in CAT implementation "postponed the benefits of the CAT NMS Plan to investors." 85 Fed. Reg. at 31339. Relieving the SROs from the consequences of their failures under the FAMs now will weaken, if not eliminate, the incentive effects of future deadlines. Going forward, SROs will have every reason to ignore the Commission's regulatory deadlines, as they can safely bet on securing an exemptive order down the line. That result, in turn, will postpone or eliminate the benefits to investors that come with the Commission's ability to demand timely satisfaction of regulatory obligations.

The SROs have no answer for this obvious problem. Instead, they simply conflate the protection of the public interest with the protection of their pocketbooks. *See* Request 2 (claiming to satisfy § 78mm because exemption would prevent "an excessive and grossly disproportionate penalty"); *id.* at 5 (claiming to satisfy § 78mm because FAM 4 "unfairly creates a strict liability standard for [the SROs]"). But that is wrong for multiple reasons. To start, the "public interest" is not a free-floating catchall that allows the Commission to right any perceived wrong, much less for the sake of for-profit regulators. Instead, the phrase "public interest" takes its meaning from statutory context and purpose, and the Exchange Act targets things like "speculation, manipulation, fraud, anticompetitive exchange behavior, etc." *All. for Fair Bd. Recruitment v. SEC*, 125 F.4th 159, 178 & n.5 (5th Cir. 2024) (en banc). For-profit regulators' financial interests are not on that list. But the investing public *will* be harmed if they are forced to bear hundreds of millions of dollars in additional fees they had every right to believe would be shouldered by the SROs alone. And they will be further harmed if the credibility of regulatory deadlines imposed by the Commission is called into question.

IV. The SROs' request requires economic analysis the Commission has never performed.

All this aside, the SROs' request lacks a sufficient analytical foundation. When creating the Commission's exemptive authority in Section 36, Congress "expected that 'the Commission will use this authority to promote efficiency, competition and capital formation.'" 69 Fed. Reg. 54818, 54819 (2004) (quoting 17 H.R. Rep. No. 104-622, 104th Cong., 2d Sess. 38 (1996)). The Commission has therefore committed itself to relying on those considerations when exercising its exemptive authority. *See id.* That approach is correct, since exemptions in practice can function just

like amendments to the CAT NMS Plan, where the Act and Rule 613 also require consideration of efficiency, competition, and capital formation. 15 U.S.C. § 78c(f); 17 C.F.R. 242.613(a)(5).

The SROs' request would require a fresh analysis of the economic effects of imposing Period 4 costs on broker-dealers. When adopting the 2026 Funding Order, the Commission noted Citadel Securities' request for the SEC to "analyze the potential impact of allocating all Period 4 costs to Industry Members on market efficiency, competition and capital formation." 91 Fed. Reg. 13410, 13445-46 (2026). Citadel Securities pointed out that without such analysis, once a funding model was approved, the SROs "would simply apply that approved methodology to the costs incurred during a specific time period." *Id.* at 13446.

The Commission, however, sidestepped all the Period 4 issues in the 2026 Funding Order. *Id.* at 13447. It thus has never analyzed the economic effects of imposing two-thirds of Period 4 costs on broker-dealers, to the tune of \$260.5 million, on top of all other ongoing CAT costs. Nor has it analyzed the economic effects of imposing those Period 4 costs over the course of a single year, as the 2026 Funding Order imposes a historical recovery period of two to five years. *Id.* at 13451. It cannot grant the SROs' request without completing both steps. Yet the SROs have offered no support to allow the Commission to do its job.

V. The SROs' timing request conflicts with the 2026 Funding Order.

Finally, the SROs' attempt to compress the timetable for recovering Period 4 costs into a single year is at odds with at least two features of the 2026 Funding Order.

First, in the 2026 Funding Order, the Commission approved a historical recovery period of "no less than 24 months and no more than five years" in order to "spread[] the Historical CAT Costs over an appropriate amount of time." *Id.* at 13451. The SROs offer no good reason why using a one-year period—effectively multiplying the rate for historical CAT fees by two to five times—is similarly "appropriate."

At most, the SROs claim that packing in recovery of Period 4 costs before the March 31, 2028 expiration of the 2026 Funding Order "would avoid the need to reconcile competing provisions of the Plan." Request 14. As the SROs see it, if they cannot collect all Period 4 costs before the Plan's March 2028 expiration date, that internal deadline would conflict with the Plan provision allowing for collection "until all Historical CAT Costs for the Historical CAT Assessment are collected." CAT NMS Plan § 11.3(b)(i)(D); *see* 91 Fed. Reg. at 13452. But those provisions are already in harmony, as the one allowing the SROs to collect historical CAT costs assumes the existence of an operative funding order. So once the 2026 Funding Order expires, so would any remaining assessments of Period 4 fees.

The SROs also contend that the one-year fee rate for Period 4 costs—\$0.000022—would be "comparable" to rates previously charged for prospective and historical CAT fees. Request 14. But the SROs' proposed rate is in fact much higher, ranging anywhere from 69% to 10,000% more than the examples of historical fees they cite. *See* Request 14 n.51. And even more importantly, the one-year fee rate would not exist in a vacuum: broker-dealers would be forced to bear that comparatively high rate alongside ongoing CAT costs. The 2026 Funding Order estimates broker-dealers will already bear anywhere from \$97.6 million to \$146.4 million of ongoing 2027 CAT

costs, depending on how much the SROs pass on indirectly. *See* 91 Fed. Reg. at 13465-67. The SROs’ request to add on another \$260 million in the same one-year period would result in up to \$400 million landing on the shoulders of investors in a single year. That is not an “appropriate” burden to impose simply because the SROs would like to recover Period 4 costs before the 2026 Funding Order expires. *Id.* at 13451. And as noted, that burden far exceeds any estimate of economic impact the Commission has conducted. *Supra* at 8-9.

Second, the Commission set a March 31, 2028 expiration date for the 2026 Funding Order for the specific purpose of limiting its economic effects. “By being limited to a given time period,” the Commission explained, “the effects” of the 2026 Funding Proposal “will not be as large economically as they would be if not time limited.” *Id.* at 13458. The SROs’ request to compress Period 4 fees into a single year covered by the 2026 Funding Order is also a request to compress the economic *effects* of those fees into that year. But shifting the economic effects that would otherwise fall outside the scope of the 2026 Funding Order (and thus would not occur at all) into the scope of that Order defeats the point of making it time-limited in the first place.

Put differently, the Commission cannot claim the economic effects of the 2026 Funding Order are limited because of an expiration date and then grant exemptive relief to increase those effects after the fact. If the Commission grants the SROs’ request with respect to FAM 4, it should hew to the historical recovery period set out in the 2026 Funding Order. Otherwise, the Commission will need to revisit its decision to adopt the 2026 Funding Order in the first place.

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We respectfully submit that the Commission should deny the SROs’ request. We thank the Commission for considering our comments.

Please feel free to call the undersigned with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger

Managing Director

Global Head of Government & Regulatory Policy