SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106949; File No. 4-698]

Order Granting Exemptive Relief, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 608(e) of Regulation NMS Under the Exchange Act, from Certain Requirements of the National Market System Plan Governing the Consolidated Audit Trail Related to the Recovery of Costs Incurred During Period 4 of the Financial Accountability Milestones

November 20, 2026.

I. Introduction

By letter dated August 11, 2026, Consolidated Audit Trail, LLC ("CAT LLC"), on behalf of the Participants[1] in the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan" or "Plan"),[2] requested that the Securities and Exchange Commission

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[1] The twenty-nine 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. ("FINRA"), Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, MIAX Sapphire, LLC, MX2 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 (the "Participants"). CAT LLC notes that, while this exemptive request represents the consensus of the Participants, individual Participants may not fully agree with every statement set forth in the exemptive request letter.

[2] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 ("Exchange Act") and the rules and regulations thereunder. See Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("CAT NMS Plan Approval Order"). The CAT NMS Plan is Exhibit A to the CAT NMS Plan Approval Order. See CAT NMS Plan Approval Order, 81 FR at 84943–85034. The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company formed under Delaware state law through which the Participants conduct the activities of the CAT ("Company"). Each Participant is a member of the Company and jointly owns the Company on an equal basis. The CAT NMS Plan has subsequently been amended. The latest version of the CAT NMS Plan is available at https://catnmsplan.com/about-cat/cat-nms-plan. Unless otherwise noted, capitalized terms are used as defined in the CAT NMS Plan.

("Commission" or "SEC") provide exemptive relief to the Participants, pursuant to its authority under Section 36 of the Securities Exchange Act of 1934 ("Exchange Act")[3] and Rule 608(e) of Regulation NMS under the Exchange Act, in connection with the recovery of certain costs incurred during the period associated with the final of four target deadlines established for certain implementation milestones (the "FAM 4 period") as set forth in Sections 11.6(a)(i)(D), 11.6(a)(iii), and11.3(b)(i)(D)(I) of the CAT NMS Plan.[4]

Section 36(a)(1) of the Exchange Act grants the Commission the authority, with certain limitations, to "conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors."[5] Under Rule 608(e) of Regulation NMS, the Commission may "exempt from [Rule 608], 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 mechanism of, a national market system."[6]

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3 15 U.S.C. 78mm(a)(1).

4 See Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated August 11, 2026 (the "FAM 4 Exemption Request"), available at https://catnmsplan.com/sites/default/files/2026-09/08.11.26-CAT-Exemption-Request_FAM-4.pdf. See also Exchange Act Release No. 106237 (Sept. 1, 2026), 91 FR 56691 (Sept. 3, 2026) for the published notice of the FAM 4 Exemption Request.

5 15 U.S.C. 78mm(a)(1).

6 17 CFR 242.608(e).

For the reasons set forth below, this Order grants exemptive relief from Sections 11.6(a)(i)(D), 11.6(a)(iii), and 11.3(b)(i)(D)(I) of the CAT NMS Plan, as set forth below, to allow the recovery of certain costs incurred during the FAM 4 period.

II. Background

The Commission adopted Rule 613 of Regulation NMS[7] on July 18, 2012, with the goal of creating a modernized consolidated audit trail system – the CAT – that would provide regulators with timely access to a comprehensive set of trading data that more efficiently and effectively facilitates cross-market surveillance, investigations, enforcement activities, and cross-market reconstructions and analyses, as appropriate. On November 15, 2016, the Commission approved the CAT NMS Plan as the national market system plan required by Rule 613.[8] Rule 613[9] and the CAT NMS Plan[10] both contemplate that the costs of building and operating the CAT would be allocated among Industry Members[11] and the Participants.[12] During the development and implementation stages of the CAT, however, the Participants fully funded the

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7 See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (Aug. 1, 2012) ("Rule 613 Adopting Release"); 17 CFR 242.613.

8 See note 2 supra.

9 See, e.g., Rule 613(a)(1)(vii)(D) (requiring the CAT NMS Plan to address "[h]ow the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors").

10 See, e.g., CAT NMS Plan, supra note 2, at Section 11.1(c) (providing that "…in connection with the creation and implementation of the CAT…fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members").

11 "Industry Member" means "a member of a national securities exchange or a member of a national securities association." See CAT NMS Plan, supra note 2, at Section 1.1.

12 See CAT NMS Plan, supra note 2, at Section 11.1(b), 11.3(a) and (b). Section 11.1(b) of the CAT NMS Plan authorizes the Operating Committee to establish fees for Execution Venues (which include Participants) and Industry Members to fund the CAT and Sections 11.3(a) and (b) of the CAT NMS Plan set forth how these fees would be calculated. See also 17 CFR 242.613(a)(1)(vii)(D) (requiring the CAT NMS Plan to discuss the proposed allocation of estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors).

costs associated with building and operating the CAT through non-interest-bearing loans.[13] The CAT NMS Plan provides for the recovery of Industry Members' allocated share of CAT costs through fees assessed on Industry Members.[14] Any such fees must be filed with the Commission and are subject to Commission review for consistency with the Exchange Act and the Plan.[15]

On May 15, 2020, after significant delays in the development and implementation of the CAT,[16] the Commission amended the CAT NMS Plan to establish target deadlines for four Financial Accountability Milestone (or "FAM") provisions and to reduce the amount that the Participants could recover from Industry Members if they missed those deadlines.[17] Specifically, Section 11.6 of the CAT NMS Plan requires the Participants to satisfy four implementation

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13 See, e.g., Securities Exchange Act Release No. 100938 (Sept. 5, 2024), 89 FR 73802, 73803 (Sept. 11, 2024) ("Example Historical CAT Costs Fee Filing") (providing an example Participant fee filing discussing the loans for the historical CAT costs). See also Rule 613 Adopting Release at 45795 ("[A]lthough the plan sponsors likely would initially incur the costs to establish and fund the central repository directly, they may seek to recover some or all of these costs from their members.").

14 See CAT NMS Plan, supra note 2, Section 11.1(b) and 11.2(a).

15 15 U.S.C. 78s(b); 17 CFR 242.608. See also CAT NMS Plan, supra note 2, at Section 11.1(b) (stating that the Participants must file proposed fees for Industry Members with the Commission); id. at Section 11.2(a) (stating that the Operating Committee shall seek to create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate, and administer the CAT and the other costs of the Company).

16 The CAT NMS Plan established deadlines related to the implementation of critical CAT functionality, including (1) the requirement that the Participants begin recording and reporting data by November 15, 2017, and (2) the requirement that each Participant require Industry Members and Small Industry Members to begin reporting data by November 15, 2018 and November 15, 2019, respectively. See CAT NMS Plan, supra note 2, at Section 6.7(a). The Participants requested an exemption extending these deadlines. The Commission did not grant this request. See, e.g., Statement on Status of the Consolidated Audit Trail (Aug. 27, 2018), https://www.sec.gov/news/public-statement/tm-status-consolidated-audit-trail (stating that the Participants requested an exemption to commence Participant reporting on November 15, 2018 and Industry Member reporting on November 15, 2019). Although the Participants began reporting some transaction data to the Central Repository on November 15, 2018, the Participants acknowledged that not all of the required functionality had been implemented. See CAT NMS Announces Initiation of Reporting to the Consolidated Audit Trail (Nov. 16, 2018), https://www.catnmsplan.com/wp-content/uploads/2018/11/Press-Release-CAT-Launchfinal.pdf. "Central Repository" means the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement. See CAT NMS Plan, supra note 2, at Section 1.1.

17 See Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) ("FAM Release"). See also, e.g., CAT NMS Plan, supra note 2, at Section 11.6; Securities Exchange Act Release No. 86901 (Sept. 9, 2019), 84 FR 48458 (Sept. 13, 2019) ("FAM Proposal") (discussing the various deadlines missed by the Participants).

milestones by specified deadlines in order to recover from Industry Members the full amount of the Industry Members' allocated share of the CAT costs incurred during each FAM period. Section 11.6 also sets forth a schedule detailing the extent to which those fees are reduced when a target deadline is missed.

The final FAM, "Full Implementation of CAT NMS Plan Requirements" or "FAM 4," is 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 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. This Financial Accountability Milestone shall be considered complete as of the date identified in a Quarterly Progress Report meeting the requirements of Section 6.6(c).[18]

Section 11.6(a)(i)(D) of the CAT NMS Plan set forth the target date for completion of FAM 4 as December 30, 2022, stating that:

[18] Defined terms can be found in Section 1.1 of the CAT NMS Plan.

> [t]he Participants will be entitled to collect the full amount of: . . . (D) Any Post-Amendment Industry Member Fees established or implemented to recover the Post-Amendment Expenses incurred from the date immediately following the achievement of Full Availability and Regulatory Utilization of Transactional Database Functionality to the date of Full Implementation of CAT NMS Plan Requirements ("Period 4"), so long as such date is no later than December 30, 2022.

Thus, absent an exemption, to be entitled to recover from Industry Members the full amount of the CAT costs incurred during the FAM 4 period and allocated to Industry Members pursuant to the Plan, the Participants were required to achieve the full implementation of all CAT functionality required by Rule 613 and the CAT NMS Plan, including both the transactional database and the functionality necessary to collect, process, and make available the required customer and account information, which at that time was implemented through the Customer and Account Information System ("CAIS"), a separate and distinct system in the CAT.[19] If this target deadline of December 30, 2022 was missed, Section 11.6(a)(iii) states that the amount of Post-Amendment Industry Member Fees that the Participants may collect for Period 4 would be reduced according to the following schedule:

> (A) By 25% if the Participants missed the deadline by less than 90 days;
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> (B) By 50% if the Participants missed the deadline by 90 days or more, but less than 180 days;
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> (C) By 75% if the Participants missed the deadline by 180 days or more, but less than 270 days; and

[19] In early 2026, the Commission approved amendments to the CAT NMS Plan that renamed CAIS as the Reference Database and modified the customer and account information reporting requirements, including by eliminating certain customer and account information that previously was required to be reported to CAT. See Exchange Act Release No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026).

(D) By 100% if the Participants missed the deadline by 270 days or more.

When implementing these deadlines in the FAM Release, the Commission acknowledged that both Industry Member and Participant commenters urged the Commission to adopt a more flexible approach that could account for the possibility of reasonable or unforeseeable delays to CAT implementation.[20] These commenters recommended that the Commission include provisions or formal mechanisms in the CAT NMS Plan that would allow the Commission, "after the holistic assessment of all factors impacting the Participants' ability to meet a particular milestone date, flexibility to extend milestone dates without holding Participants directly accountable (financially or otherwise)" or to "suspend[] the proposed financial penalties based on the cause, foreseeability and attempts to mitigate the impact of the delay."[21] In response, the Commission stated that its approach "would not allow further delays to occur without consequence," but emphasized that it "has the authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone" and

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20 See FAM Release, supra note 17, at 31335.

21 See id. See also Letter from Christopher Bok, Director, Financial Information Forum, to Vanessa Countryman, Secretary, Commission, dated October 28, 2019, at 4, available at https://www.sec.gov/comments/s7-13-19/s71319-6355358-196251.pdf; Letter from Theodore R. Lazo, Managing Director & Associate General Counsel, and Ellen Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, dated October 28, 2019, at 2, available at https://www.sec.gov/comments/s7-13-19/s71319-6366765-195937.pdf; Letter from Thomas Tesauro, President, Fidelity Capital Markets, to Vanessa Countryman, Secretary, Commission, dated October 28, 2019, at 5, available at https://www.sec.gov/comments/s7-13-19/s71319-6357608-196387.pdf.

explained that "this ability, in particular, should alleviate . . . concerns regarding the potential impact of unforeseeable or reasonable delays."[22]

III. Request for Exemptive Relief

In the FAM 4 Exemption Request, CAT LLC, on behalf of the Participants, stated that the first three FAMs, including Full Availability and Regulatory Utilization of Transactional Database Functionality, were completed by the deadlines set forth in the Plan.[23] CAT LLC stated that the fourth milestone, FAM 4, required the completion of a novel and separate system for the submission of customer and account data (the CAIS) by December 30, 2022. According to CAT LLC, certain technical aspects associated with the construction and completion of the separate system were not completed until July 15, 2024.[24] CAT LLC also stated that during the FAM 4 time period (January 1, 2022 through July 15, 2024), it incurred costs of $99,307,505 related to the completion of the CAIS. And, during the same time, CAT LLC continued to operate the transactional database, incurring $364,219,549 in technology costs and $26,624,090 in other CAT LLC operating costs. The overall costs incurred during this time period totaled $490,151,144. Thus, pursuant to the schedule set forth in Section 11.6(a)(iii), the amount of Post-Amendment Industry Member Fees that the Participants could recover for FAM 4 would be

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22 See FAM Release, supra note 17, at 31335. See also id. at 31335 n.160 (acknowledging Participant concerns about a particular FAM requirement and explaining that, following adoption of the FAM amendments, "the Commission will continue to monitor the progress of CAT implementation closely and could consider exempting the Participants from compliance with th[e] condition at a later date, if appropriate," consistent with "the Commission's ability to grant exemptive relief from any requirement associated with a Financial Accountability Milestone").

23 See FAM 4 Exemption Request, supra note 4, at 6. Indeed, beginning in 2024, the Participants have sought to fully recover the expenses of the first three FAMs and other historical costs from Industry Members by implementing a Historical CAT Assessment in CAT fee filings. See, e.g., the Example Historical CAT Costs Fee Filing, supra note 13.

24 See FAM 4 Exemption Request, supra note 4, at 7. See also, Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024), https://www.catnmsplan.com/sites/default/files/2024-07/CAT_Q2-and-Q3-2024-QPR.pdf (indicating that Full Implementation of CAT NMS Plan Requirements was completed as of July 15, 2024).

reduced by 100%. In other words, Section 11.6(a)(iii) prevents recovery of any and all costs, including costs associated with operation of the previously completed transactional database, incurred by the Participants during this time period. CAT LLC requests that the Commission grant exemptive relief from the fee reduction that would be imposed by Sections 11.6(a)(i)(D) and 11.6(a)(iii).

CAT LLC stated that exemptive relief "would prevent an excessive and grossly disproportionate penalty from being imposed in connection with FAM 4."[25] CAT LLC states that "the CAT NMS Plan requirements related to the transactional database were implemented prior to FAM 4," such that only "certain technical aspects" of FAM 4 related to the CAIS "were not completed until July 15, 2024."[26] Accordingly, CAT LLC stated that "the vast majority of Period 4 costs related to the operation of the transactional database, which was fully implemented and utilized by the Commission in both enforcement and rulemaking during this entire period."[27] CAT LLC stated that, in spite of the limited impact of the delay in CAIS implementation, the FAM 4 provisions would prevent the recovery of any CAT costs incurred by CAT LLC during Period 4 (January 1, 2022 through July 15, 2024), including those related to the ongoing, successful operation of the transactional database that was completed on time.[28] CAT LLC further stated that such a result would not be a reasonable or equitable application of the financial accountability provisions adopted by the Commission.[29]

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25 Id. at 2.

26 Id. at 3.

27 Id. at 3.

28 Id.

29 Id.

CAT LLC stated that, for Period 4, it continued to operate the transactional database, incurring $364,219,549 in related technology costs and $26,624,090 in other operating costs ("non-CAIS FAM 4 costs"), and incurred CAIS-related costs of $99,307,505 ("CAIS FAM 4 costs").[30] CAT LLC stated that total Period 4 costs were $490,151,144,[31] and this excludes remediation costs incurred by FINRA CAT relating to the delayed implementation of CAIS.[32] CAT LLC seeks exemptive relief as to the total $390,843,639 of non-CAIS FAM 4 costs.[33] CAT LLC stated that with such exemptive relief, based on the existing Funding Model,[34] CAT LLC would anticipate seeking recovery of $260,562,426 in costs related to FAM 4 from Industry Members (*i.e.*, two-thirds of $390,843,639).[35] CAT LLC asked the Commission to consider materiality and proportionality because "treating FAM 4 as wholly unmet" would effectively impose "a $326 million strict liability penalty based solely on the late completion of certain technical CAIS elements," and stated that the "delayed technical aspects of CAIS did not affect the overall utility of the transactional database."[36]

In addition, CAT LLC requested an exemption from Section 11.3(b)(i)(D)(I) of the CAT NMS Plan, which would allow for a shortened Historical Recovery Period.[37] Section 11.3 is part of the CAT NMS Plan that contains the provisions commonly referred to as the CAT funding

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30 See FAM 4 Exemption Request, supra note 4, at 8. CAT LLC stated that the other operating costs category was largely comprised of fees for legal, consulting, and accounting support. Id. at 7.

31 Id.

32 Id.

33 Id.

34 See Exchange Act Release No. 105003 (Mar. 16, 2026), 91 FR 13410 (Mar. 19, 2026) ("Funding Model").

35 See FAM 4 Exemption Request, supra note 4, at 8.

36 Id. at 4.

37 See FAM 4 Exemption Request, supra note 4, at 13.

model. Those provisions establish how the costs of developing, operating, and maintaining the CAT are allocated and recovered from Participants and Industry Members. Section 11.3 establishes the framework for calculating and assessing fees to fund the CAT. Section 11.3(b)(i)(D)(I) requires the Participants, when establishing fees to recover CAT costs previously paid by the Participants ("Historical CAT Costs"), to determine a reasonable period over which those costs will be recovered through such fees ("Historical Recovery Period"), and provides that this period may not be less than 24 months or more than five years.[38] However, another provision in the funding model, Section 11.3(f) of the CAT NMS Plan, prohibits billing or otherwise requesting the payment of CAT fees to fund the costs to build, operate, and administer the CAT from Industry Members after March 31, 2028, which is less than 24 months from the date of this request.[39] Accordingly, CAT LLC requested an exemption from Section 11.3(b)(i)(D)(I) of the CAT NMS Plan to allow for a Historical Recovery Period of one year.[40] CAT LLC currently estimates that the fee rate necessary to recover $260,562,426 would be approximately $0.000022 per executed equivalent share for a one-year recovery period,[41] which CAT LLC states is comparable to the fee rates previously charged to fund CAT costs and to recover CAT costs previously paid by the Participants.[42]

As such, CAT LLC represented that using a Historical Recovery Period shorter than two years would continue to result in a reasonable fee rate.

IV. Discussion and Exemptive Relief

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38 See FAM 4 Exemption Request, supra note 4, at 13.

39 Id.

40 Id.

41 See FAM 4 Exemption Request, supra note 4, at 14.

42 Id. See also CAT Fee Alerts, https://www.catnmsplan.com/cat-fee-alerts.

In the FAM 4 Exemption Request, the Participants seek exemptive relief from Sections 11.6(a)(i)(D), 11.6(a)(iii), and 11.3(b)(i)(D)(I) of the CAT NMS Plan that would permit them to seek to recover from Industry Members, over a one-year recovery period, Industry Members' share of the non-CAIS FAM 4 costs. These costs were incurred primarily in operating the CAT transactional database, a core regulatory system that captures trading in U.S. exchange-listed equities, listed options, and OTC equity securities and supports regulatory oversight of the national market system. After carefully considering the FAM 4 Exemption Request and the comment letters received,[43] the Commission has determined that granting such exemptive relief pursuant to Section 36(a)(1) of the Exchange Act is appropriate in the public interest and is consistent with the protection of investors. The Commission has further determined, pursuant to Rule 608(e), that this 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 the perfection of, the mechanisms of a national market system. The reasons for these determinations, and the Commission's responses to comments received, are discussed below.

A. The Commission's Authority to Grant Relief

[43] See Letter from Joanna Mallers, Secretary, PTG, to Vanessa Countryman, Secretary, Commission, dated Oct. 16, 2026 available at https://www.sec.gov/comments/4-698/4698-1096059-3851346.pdf ("PTG Letter"); Letter from Joseph Corcoran, Managing Director and Associate, General Counsel, SIFMA; Gerald O'Hara, Vice President, Assistant General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated Oct. 5, 2026 available at https://www.sec.gov/comments/4-698/4698-1083639-3776808.pdf ("SIFMA Letter"); Letter from Anonymous to Commission, dated Oct. 5, 2026 available at https://www.sec.gov/comments/4-698/4698-1083180-3773987.html ("Anonymous Letter"); Letter from Steffen N. Johnson, Wilson Sonsini Goodrich & Rosati Professional Corporation on behalf of "FINRA", to Vanessa Countryman, Secretary, Commission, dated Oct. 5, 2026 available at https://www.sec.gov/comments/4-698/4698-1084539-3778486.pdf ("FINRA Letter"); Letter from Stephen John Berger, Managing Director, Global Head of Government and Regulatory Policy, Citadel Securities, to Vanessa Countryman, Secretary, Commission, dated Oct. 5, 2026 available at https://www.sec.gov/comments/4-698/4698-1084209-3777708.pdf ("Citadel Letter"); and Letter from The Native Claim Firm to Commission, dated Oct. 1, 2026 available at https://www.sec.gov/comments/4-698/4698-1079719-3751287.pdf ("Native Claim Letter").

Three commenters opposed the request for relief and urged the Commission to deny any exemptive relief for the recovery of FAM 4 costs.[44] Among other objections, these commenters questioned the Commission's authority to grant the requested relief. They asserted that the Participants' ability to recover FAM 4 costs from Industry Members was extinguished when the 270-day period following the FAM 4 deadline expired in 2023,[45] and one commenter asserted that Industry Members thereby acquired a right to be free of any obligation to contribute to FAM 4 costs.[46] According to these commenters, the requested relief would revive the extinguished recovery right, imposing new liability on Industry Members for past conduct contrary to the presumption against retroactivity, and they maintained that Section 36 provides no clear congressional authorization for such action.[47] Two commenters further asserted that Industry Members had set budgets and business plans in reliance on the FAMs operating according to their terms.[48]

Contrary to the opposing commenters' assertions, the requested relief does not implicate the retroactivity doctrine. The FAMs placed conditions on the Participants' ability to recover Period 4 costs through CAT fees, subject from the outset to the Commission's exercise of exemptive authority. They did not confer on Industry Members a right to be free of those costs. When the Commission adopted the FAMs, it simultaneously made clear that it retained authority

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44 See PTG Letter at 1-2, SIFMA Letter at 6-7, and Citadel Letter at 5-6.

45 See PTG Letter at 3-4, SIFMA Letter at 2 and 5-7, and Citadel Letter at 2-3 and 8.

46 See Citadel Letter at 2-3.

47 See PTG Letter at 3-4, SIFMA Letter at 2 and 5-7, and Citadel Letter at 2-3 and 8. These commenters also asserted that although the Commission could have exercised its exemptive authority before FAM 4 operated to eliminate recovery, it may not do so now. See Citadel Letter at 3, SIFMA Letter at 7, and PTG Letter at 4. Another commenter pointed out that CAT LLC had, in fact, sought exemptive relief before the FAM 4 deadline had passed. See FINRA Letter at 6.

48 See SIFMA Letter at 7 and Citadel Letter at 2.

"to grant exemptive relief from any requirement associated with a particular Financial Milestone" in appropriate circumstances.[49] Indeed, the Commission began to issue exemptive relief from various FAM requirements just months after the issuance of the FAM Release in May 2020[50] and continued to do so throughout the period during which the FAMs were applicable, including exemptive relief issued years after the target deadlines for FAMs 1-3 had passed[51] but before historical fees for FAMs 1-3 were established by the Participants for their members.[52] Industry Members thus could not have reasonably relied on the FAMs as granting them an unconditional entitlement not to bear any Period 4 costs in the event the FAM 4 deadline was not met.

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49 See FAM Release, supra note 17, at 31335 n.160. Nothing in the FAM release or in the Exchange Act precludes the Commission from granting relief from a FAM deadline after the deadline's expiration.

50 See, e.g., Securities Exchange Act Release No. 90689 (Dec. 16, 2020), 85 FR 83667 (Dec. 22, 2020); Securities Exchange Act Release No. 90688 (Dec. 16, 2020), 85 FR 83634 (Dec. 22, 2020).

51 See, e.g., Securities Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128, 77129 n.13 (Nov. 8, 2023) ("The Commission has stated that, to the extent that the Participants are availing themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied. . . In connection with issuing this Order, the Commission has determined that the Participants have sufficiently complied with the conditions set forth in the prior Orders and with the technical requirements for Quarterly Progress Reports set forth in section 6.6(c) of the CAT NMS Plan, including for purposes of determining compliance with any applicable Financial Accountability Milestones. The Commission makes no determination as to the veracity of the factual assertions made in Quarterly Progress Reports submitted pursuant to section 6.6(c) or as to whether the Participants have complied with the applicable Financial Accountability Milestones in all other respects. Moreover, the Commission makes no determinations with respect to the Full Implementation of CAT NMS Plan Requirements milestone described in section 1.1 of the CAT NMS Plan or the potential application of fee reduction provisions set forth in section 11.6 of the CAT NMS Plan with respect to that milestone. Rather, the Commission will consider the Participants' compliance with the CAT NMS Plan requirements, and/or compliance with the conditions set forth in the prior Orders and the impact of that compliance, in the context of fee proposals related to that milestone. Moreover, the Commission makes no determinations regarding the Participants' compliance or non-compliance with other provisions or requirements of the CAT NMS Plan that are not discussed in the prior Orders or in this Order.").

52 See, e.g., Securities Exchange Act Release No. 99380 (Jan. 17, 2024), 89 FR 11078 (Feb. 13, 2024) (establishing fees for certain historical costs related to FAMs 1-3). Moreover, in proposing the FAMs, the Commission recognized that the Participants "could attempt to shift . . . to Industry Members" any costs the FAMs might prevent them from recovering directly by making "changes to their broader fee structures," such as "through relatively higher prices to transact on exchanges for broker-dealers." See FAM Proposal, supra note 17, at 48484, 48485.

Nor would the requested relief impose a "liability" on Industry Members for "past conduct." Under the CAT NMS Plan, historical CAT assessments are calculated and charged based on Industry Members' executed equivalent share volume during the Historical Recovery Period, that is, based on *current* rather than past market activity.[53] Any fee to recover Period 4 costs would similarly be calculated using that method. And the requested relief would not itself impose any financial obligations on Industry Members. Any fee to recover Period 4 costs would be subject to the separate rule filing process under Section 19(b) of the Exchange Act,[54] including notice and comment, the Commission's authority to temporarily suspend the fee and institute proceedings, and the requirements of the Exchange Act and the CAT NMS Plan, including that fees be reasonable and equitably allocated. Thus, rather than imposing new liability for completed conduct, the requested relief represents a determination regarding the potential allocation of historical CAT costs going forward.

The Commission also disagrees that it could exercise its exemptive authority only before FAM 4 operated to reduce recoverable fees. Neither Section 36 nor the Commission's statements in the FAM Release limit the timing of such relief. And as discussed above, the Commission has previously granted exemptive relief from particular FAM 1-3 requirements after

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53 See Funding Model, supra note 34, at 13449-50 (explaining that, for each month in which an historical CAT assessment is in effect, fees are calculated based on transaction activity from the prior month, not based on transaction activity from the historical period in question).

54 See Section 11.3(b)(iii)(B)(I) of the CAT NMS Plan, stating that "Participants will be required to file with the SEC pursuant to Section 19(b) of the Exchange Act a filing for each Historical CAT Assessment." See also Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan, explaining that "such filing shall set forth (A) the Historical Fee Rate; (B) a brief description of the amount and type of the Historical CAT Costs, including (1) the technology line items of cloud hosting services, operating fees, CAIS operating fees, change request fees, and capitalized developed technology costs, (2) legal, (3) consulting, (4) insurance, (5) professional and administration and (6) public relations costs; (C) the Historical Recovery Period and the reasons for its length; and (D) the projected total executed equivalent share volume of all transactions in Eligible Securities for the Historical Recovery Period, and a description of the calculation of the projection. The information provided in this Section would be provided with sufficient detail to demonstrate that the Historical CAT Costs are reasonable and appropriate."

the target deadlines for those FAMs had passed but before historical fees for FAMs 1-3 were established.[55] The approach taken by the Commission in this Order, therefore, was explicitly contemplated by the FAM Release and is consistent with its previous practice. In any event, Industry Members have had advance notice that the issuance of exemptive relief could alter the application of the FAM provisions. CAT LLC first requested exemptive relief from FAM 4 in November 2022, publicly and before the FAM 4 deadline,[56] and the present request revises that and subsequent requests.

B. Relief from the Period 4 Fee Reduction

In the FAM 4 Exemptive Request Letter, CAT LLC stated that the "technical delay in certain aspects of CAIS" was "unforeseeable and reasonable."[57] CAT LLC further stated that 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."[58] One commenter, a Participant, agreed and stated "CAT LLC was not building the CAT with a static set of requirements but rather with a framework that continued to evolve, impacting the ability to plan for and deliver on the timeline the Commission specified in the FAMs."[59] This commenter

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55 See supra notes 50-52, discussing previously granted exemptive relief from particular FAM 1-3 requirements after the target deadlines for those FAMs had passed.

56 See, e.g., Letter from Mike Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission (dated Nov. 22, 2022), available at https://catnmsplan.com/sites/default/files/2022-11/11.22.22-Exemptive-Request-FAM-4.pdf. See also, e.g., Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated May 22, 2023, available at https://catnmsplan.com/sites/default/files/2023-06/05.22.23-Exemption-Request-Regarding-FAM-4.pdf ("2023 Exemption Request"); FINRA Letter, supra note 43, at 6-7.

57 See FAM 4 Exemptive Request Letter at 5.

58 Id. at 10-11.

59 See FINRA Letter at 16.

supported recovery of all Period 4 costs – not just the non-CAIS FAM 4 costs – suggesting that the initial cost and data volume projections were too low, and the CAT, including aspects of CAIS, was largely available to regulators by the FAM 4 deadline.[60]

Other commenters opposed the exemptive relief on the grounds that the delays were neither unforeseeable nor reasonable, and likewise disagreed that the magnitude of the financial consequences of the delay was unforeseeable or would justify relief.[61] These commenters stated that the Participants provided the Commission with their own projected timelines to complete the FAMs and that the Participants had substantial time to complete FAM 4 by their chosen deadline.[62]

Two commenters disputed that the timely completion of the transactional database and its continued operation and use during Period 4 justified relief from the FAM 4 requirements.[63] One of these commenters noted that FAMs 1-3 already required completion of the transactional database, and that the Participants are recovering the development costs for completing FAMs 1-3.[64] Both commenters also disputed that the Participants' inability to recover FAM 4 costs should be viewed as a "penalty" to "be analyzed under the civil enforcement framework that considers 'materiality or proportionality.'"[65]

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60 See FINRA Letter at 2 and 5-6. FINRA stated that "[a]s of September 30, 2022, 99% of Industry Members and CAT Reporting Agents had completed CAIS production readiness certification and 96% of Data Submitters had completed the first interim reporting obligation of the CAIS implementation schedule. As of November 14, 2022, 92% of Data Submitters had completed the second interim reporting obligation of the CAIS implementation schedule, which required the submission of all active accounts to CAIS."

61 See SIFMA Letter at 9 and Citadel Letter at 5.

62 See PTG Letter at 2, SIFMA Letter at 6, and Citadel Letter at 5-6.

63 See Citadel Letter at 5 and SIFMA Letter at 7.

64 Id.

65 See Citadel Letter at 5; see also SIFMA Letter at 6.

These commenters further stated that the Participants' request for exemptive relief is not necessary or appropriate in the public interest and would not be consistent with the protection of investors.[66] They asserted that the relief would not provide any benefit to investors or the markets, but instead transfer significant historical CAT costs to investors.[67] These commenters stated that, if relief is granted, it would weaken the incentive effects of future Commission-imposed regulatory deadlines.[68] Further, these commenters asserted that they or their members invested substantial amounts of their own money and resources to develop and maintain the reporting systems necessary to meet the implementation deadlines established by the Participants – particularly for building the necessary customer-database reporting infrastructure for CAIS – and that they continued to incur additional costs as implementation extended beyond the established deadlines.[69] They stated that those costs were not accounted for in the request for relief.[70] These commenters asserted that the financial consequences for failing to meet the FAMs were the entire point of the Commission implementing the FAMs, and that the public and the Participants understood that they 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."[71]

The Commission has determined that the requested relief is warranted under the standards set forth in Section 36 of the Exchange Act and Rule 608(e). In reaching this determination, the Commission does not find that the Participants satisfied all FAM 4

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66 See PTG Letter at 3, SIFMA Letter at 4, and Citadel Letter at 7.

67 See PTG Letter at 3 and Citadel Letter at 7.

68 See Citadel Letter at 8, PTG Letter at 3, and Native Claim Letter at 2.

69 See PTG Letter at 3, SIFMA Letter at 5-6, and Citadel Letter at 7.

70 Id.

71 Id.

requirements on time, which they acknowledge they did not. Rather, the Commission has considered, among other things, the extent of CAT implementation during Period 4, the nature of the CAIS deficiencies, and the relationship between those deficiencies and the magnitude of the costs at issue, which is the type of case-specific assessment the Commission indicated its exemptive authority would permit when it adopted the FAMs.

By the FAM 4 deadline, the Participants had substantially completed implementation of the FAM 4 requirements, including the fully operational CAT transactional database, a significant undertaking that created a regulatory system capable of collecting and processing transaction data across the national market system and providing the Participants and the Commission with access to that data for regulatory purposes. Specifically, FAMs 1, 2, and 3 had been completed on time.[72] Effective as of September 2021, FINRA had retired its predecessor audit trail system, OATS, after determining that the CAT met the requisite accuracy and reliability standards.[73] CAT query tool functionality was available to the Participants and the Commission, and the average overall CAT error rate was below 5%.[74] Critical infrastructure for the transactional database—including functionality that enabled data ingestion, processing, validation, security, cloud storage, data retention, and regulatory access and use—was developed, successfully tested, and fully implemented. The Commission and the Participants

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72 Each FAM is considered complete as of the date identified in the Participants' Quarterly Progress Reports. See, e.g., Q1 2022 Quarterly Progress Report (Jan. 17, 2022), available at https://catnmsplan.com/sites/default/files/2022-04/CAT-Q1-2022-QPR.pdf (indicating that FAMs 1-3 were completed on time).

73 FINRA Regulatory Notice 21-21, "FINRA Eliminates the Order Audit Trail System (OATS) Rules," available at https://www.finra.org/rules-guidance/notices/21-21.

74 See CAT Q4 2022 Quarterly Progress Report (stating that "[t]he query tool functionality incorporates the data from Phases 2a, 2b, 2c and 2d and is available to the Participants and to the Commission" and that "[t]he average overall error rate is less than 5% as of December 31, 2022").

relied on CAT transactional data throughout Period 4 for surveillance, investigations, enforcement activities, and cross-market reconstructions and analyses, as appropriate.

The Participants had also made meaningful progress towards the implementation of the remaining FAM 4 requirements related to the CAIS. As commenters have noted:

> As of September 30, 2022, 99% of Industry Members and CAT Reporting Agents had completed CAIS production readiness certification and 96% of Data Submitters had completed the first interim reporting obligation of the CAIS implementation schedule. As of November 14, 2022, 92% of Data Submitters had completed the second interim reporting obligation of the CAIS implementation schedule, which required the submission of all active accounts to CAIS.[75]

Industry Members were further reporting customer and account information to CAIS on a daily basis, such data was accepted and validated by CAIS, and the CAIS data was accessed and used by regulators during this period to perform surveillance, investigations, enforcement activities, and cross-market reconstructions and analyses, as appropriate.[76] However, certain CAIS functionality was not fully implemented by the FAM 4 deadline. Various technical issues, including data load defects, deficiencies in the error corrections process, and other processing defects affected the reliability of CAIS data and the availability of information to regulators, and these issues were not fully resolved until July 15, 2024.[77] Nevertheless, all other functionality required for "Full Implementation of CAT NMS Plan Requirements" was implemented on time

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75 See FINRA Letter, supra note 43, at 4-5.

76 See, e.g., CAT Q4 2022 Quarterly Progress Report (stating that "Industry Members have been required to report, and are reporting, required data to CAIS on a daily basis since November 7, 2022, consistent with interim reporting obligations" and that the "CAIS system accepts and validates the CAIS data submitted by Industry Members"); 2023 Exemption Request, supra note 56, at 4.

77 See CAT Q4 2022 Quarterly Progress Report (stating that "[o]utstanding CAIS system issues present challenges for Industry Members with respect to error corrections and for regulators with respect to information available in the CAIS regulatory portal"); see also 2023 Exemption Request, supra note 56, at 4-7.

consistent with the requirements of the Plan and applicable exemptive relief.[78] And the progress made by the Participants in fully implementing the CAT transactional database and partially implementing the CAIS substantially achieved the Commission's expressed goal in adopting Rule 613 of improving the accuracy, completeness, accessibility, and timeliness of the data available to regulators—even without full use of the CAIS.[79]

Absent the requested relief, the Participants would be unable to recover from Industry Members, through CAT fees, any portion of the $490,151,144 in CAT costs they incurred during Period 4. The vast majority of those costs relate to the transactional database that the Participants implemented on time and that was fully operational throughout the period, which the Participants represent totals $364,219,549 in technology costs unrelated to CAIS and $26,624,090 in other CAT LLC operating costs (separate and apart from any CAIS-related costs), while approximately 20% of the costs ($99,307,505) relate to the CAIS system that was partially but not fully implemented by the FAM 4 deadline.[80] CAT LLC requested exemptive relief only for the non-CAIS FAM 4 costs, which CAT LLC characterized as being separate and apart from any CAIS-related costs. Providing this relief would permit them to seek to recover up to $260,562,426 (two-thirds of those costs) from Industry Members with respect to these costs.[81]

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78 See, e.g., SIFMA, Consolidated Audit Trail (CAT), https://www.sifma.org/issues/regulatory-compliance/consolidated-audit-trail (last visited October 14, 2026) (stating that the "transaction database become fully operational in December 2021, marking a major milestone in market surveillance infrastructure"). As explained above, the Commission has previously granted exemptive relief to the Participants with respect to several CAT NMS Plan requirements. In doing so, the Commission stated that, to the extent the Participants avail themselves of exemptive relief from a CAT NMS Plan requirement, such requirement shall not be included in the requirements for a Financial Accountability Milestone, provided that the conditions of the exemption are satisfied. See, e.g., notes 50-51 and associated text supra.

79 See, e.g., Rule 613 Adopting Release, supra note 7.

80 See FAM 4 Exemption Request, supra note 4, at 3.

81 See FAM 4 Exemption Request, supra note 4, at 10.

The Exchange Act permits the Participants, as self-regulatory organizations, to recover the costs of their regulatory activities from their members. Consistent with the statutory presumption of cost-recovery, the CAT NMS Plan generally provides that the Participants and Industry Members are to share the costs of the CAT. The interim funding model currently in effect splits historical and prospective CAT costs evenly among the buyer, seller, and market regulator in transactions reportable to the CAT.[82] The Commission has previously found that this approach, which allocates CAT costs among the primary parties that participate in and benefit from the trading activity that generates those costs and the market oversight the CAT enables, is reasonable and consistent with the public interest and the protection of investors.[83]

The FAMs represent an exception to that general cost-sharing premise, placing conditions on the Participants' ability to recover Industry Members' share of costs in order to reduce the likelihood of implementation delays that "prevent regulators and market participants from reaping the regulatory benefits of the CAT."[84] In adopting the FAMs, the Commission responded to the recommendation of both Participants and Industry Members to build into the Plan a flexible, holistic assessment of whether to hold the Participants financially accountable for missed implementation milestones by emphasizing that it retained the authority to grant exemptive relief from "any requirement associated with a [FAM]" where "appropriate."[85] The Commission believes it is appropriate to exercise that reserved authority based on the specific circumstances of Period 4.

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82 See Funding Model, supra note 34, at 13412.

83 Id.

84 See FAM Release, supra note 17, at 31333, 31335.

85 Id. at 31335 n.160.

A 100% reduction of all CAT costs incurred during Period 4 would extend not only to the costs of the one component that the Participants did not fully implement on time, but also to the full costs of operating the transactional database, a separate system that was completed on time. A reduction of that scope, totaling $326,767,429 (two-thirds of the FAM 4 total costs), would not be commensurate with the significance of the CAIS deficiencies relative to the CAT as a whole or with their effect on the CAT's regulatory utility during Period 4. Those deficiencies did not prevent regulators from obtaining the substantial regulatory benefits of the transactional database or from meaningfully benefiting from the data reported to CAIS, and regulators relied on both systems in carrying out their responsibilities to maintain the integrity of the securities markets and enforce the securities laws. Moreover, the magnitude of Period 4 costs, and associated reduction in CAT fees, was driven in significant part by unanticipated growth in trading activity, as well as data processing and storage costs, that the Commission has recognized were largely outside the Participants' control.[86]

The Commission disagrees with the commenters who argued that the requested relief must be rejected to preserve the incentive effects of future Commission regulatory deadlines or to account for the costs incurred by Industry Members to meet CAIS-implementation deadlines. Granting the requested relief would not allow the delay in completing FAM 4 to occur "without consequence."[87] Even with the relief, the Participants are still precluded from imposing CAT fees to recover the $66.2 million share of CAIS-related costs that would otherwise have been allocable to Industry Members. That is a significant financial consequence, directed at the component that the Participants failed to complete on time.

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86 See Funding Model, supra note 34, at 13422-23, 13474.

87 See FAM Release, supra note 17, at 31335.

The Commission acknowledges that Industry Members made expenditures to build internal systems to comply with CAIS reporting, but those expenditures do not alter its determination that the requested relief is appropriate. Commenters have presented no specific evidence or analysis regarding the alleged adverse financial impact on Industry Members caused by the delays in CAIS implementation. Moreover, regulators were able to make meaningful use of a substantial portion of the CAIS data reported by Industry Members during Period 4. As discussed above, CAIS accepted, validated, and stored the data reported by Industry Members and that data was made available to regulators and used for surveillance and oversight. Although the above-described CAIS defects prevented certain CAIS data from being properly uploaded to the CAT's primary data stores for some period of time, such data was not lost. Rather, as described by the Participants in a previous exemptive relief request, all CAIS data reported to the CAT was preserved, and the Plan Processor later "reload[ed] historical CAIS data (both accepted and rejected) from October 2022 to present to all relevant data stores so that it [was] fully available to both regulators and Industry Members."[88]

Contrary to the assertions of certain commenters, the Commission's reservation of exemptive authority was not limited to delays that the Participants are able to establish were unforeseeable or outside the Participants' control. The FAM Release identified the potential impact of unforeseeable or reasonable delays as one circumstance in which exemptive relief could be appropriate; but the Commission's exemptive relief authority under Section 36 and Rule 608(e) is not limited to that circumstance. Under the particular circumstances here, including the Participants' substantial implementation of the CAT by the FAM 4 deadline, the nature of the remaining technical CAIS deficiencies, the substantial regulatory utility derived

[88] 2023 Exemption Request, supra note 56.

from the CAT despite those deficiencies, and the magnitude of the cost reductions that would otherwise be required (due largely to market developments outside of the Participants' control), the Commission concludes that relief limited to the non-CAIS FAM 4 costs is appropriate in the public interest and consistent with the protection of investors, as discussed above.

At the same time, the Commission does not believe it would be appropriate to go beyond the requested relief and permit the Participants to seek to recover Industry Members' two-thirds share of all Period 4 costs, as one commenter, who is a Participant, requested.[89] As the Participants have acknowledged, CAIS was not fully implemented by the FAM 4 deadline, and as a result, regulators and market participants lacked the full benefit of certain CAIS functionality during that period.[90] The reduction in recoverable fees under the Participants' requested relief is commensurate with their failure to timely complete CAIS: it applies FAM 4's reduction to the costs of the component the Participants did not complete within the period the FAMs provided. Extending relief to all Period 4 costs would leave the Participants' failure to timely implement CAIS without meaningful financial consequence, contrary to the purpose of the FAMs.

Another commenter supported granting the requested relief on the condition that an independent accountant verify that the $390,843,639 in non-CAIS FAM 4 costs was correctly classified.[91] The Commission notes that CAT LLC already publicly provides its independently audited annual financial statements on the CAT NMS Plan website.[92] CAT LLC also publicly

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89 See FINRA Letter at 2.

90 See, e.g., 2023 Exemption Request, supra note 56, at 4-7.

91 See Native Claim Letter at 1.

92 See https://www.catnmsplan.com/audited-financial-statements.

provides its annual "Financial and Operating Budget" on the Plan website.[93] Moreover, to recover from Industry Members their share of the non-CAIS FAM 4 costs, the Participants will need to separately file proposed rule filings pursuant to Section 19(b) of the Exchange Act establishing the amounts of the fees to be charged.[94] Such fee filings would be published for public comment and subject to Commission review.[95] Additionally, as discussed above, the Participants would be required to include certain cost information, including detailed information regarding the amount and type of costs proposed for recovery, and provide sufficient information to demonstrate that any proposed fees are consistent with the Exchange Act and the rules thereunder.[96] In light of CAT LLC's existing financial reporting and audit processes and the requirements of the Section 19(b) fee filing process, and absent any basis to conclude that the reported non-CAIS FAM 4 costs were materially misclassified, the Commission declines to condition this exemptive relief on the engagement of an independent auditor.

Finally, opposing commenters argued that the Commission did not consider the economic effects of imposing approximately $260.6 million (two-thirds) of the Period 4 costs on broker-dealers, and that it cannot grant the requested relief without analyzing those effects.[97] In its order approving the Funding Model, the Commission explained that the economic effects of CAT costs should be assessed on a per-share basis, by comparing CAT fee rates to other costs of execution and regulatory fees, because that approach most accurately reflects how the costs will be

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93 See https://www.catnmsplan.com/cat-financial-and-operating-budget.

94 15 U.S.C. 78s(b).

95 Id.

96 Id; See also above discussion of Sections 11.3(b)(iii)(B)(I) and (B)(II) of the CAT NMS Plan.

97 Id.

experienced by those that ultimately bear them.[98] In the approval order, a historical CAT fee rate of $0.000013 per executed equivalent share was used in that comparison.[99] The Commission concluded that CAT fee rates in general, including the historical CAT fee rate of $0.000013, are smaller than other regulatory fees. Here, the estimated fee rate of $0.000022 per executed equivalent share[100] for a one-year recovery period of the exempted FAM 4 costs is larger than the historical CAT fee rate of $0.000013 used in the order approving the Funding Model. The sum of the historical CAT fee rate in the approval order and the estimated fee rate for exempted FAM 4 costs would be $0.000035 per executed equivalent share.[101] However, even that combined higher fee rate of $0.000035 is still smaller than other regulatory fees and of the same order of magnitude as the historical CAT fee rate evaluated in the approval order.[102] Therefore, permitting the Participants to seek recovery of the exempted FAM 4 costs does not materially change the Commission's assessment of the economic impact of CAT fees set forth in the order approving the Funding Model.

C. Relief Relating to the Recovery Period

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98 See Funding Model, supra note 34, at 13468-69, Table 9 and related text.

99 See CAT Fee Alert 2025-4, dated Nov. 25, 2025, available at https://catnmsplan.com/sites/default/files/2025-11/11.25.25-CAT-Fee-Alert-2025-4.pdf.

100 See note 41 supra.

101 Following the approach in Table 9 of the Funding Model and dividing this fee rate by three, the resulting fee rate would be $0.000012 for each party of a transaction.

102 For additional context, the current fee rate established by the Participants on April 1, 2026 for prospective CAT costs is $0.000001 (CAT Fee Alert 2026-1, dated Apr. 1, 2026, available at https://catnmsplan.com/sites/default/files/2026-04/04.01.26-CAT-Fee-Alert-2026-1.pdf), and the Participants have recently established that the fee rate for such costs will be $0.000008 in 2027 (CAT Fee Alert 2026-3, dated Nov. 12, 2026, available at https://catnmsplan.com/sites/default/files/2026-11/11.12.26-CAT-Fee-Alert-2026-3.pdf). In addition, the Participants have established a fee rate of $0.000002 for a simultaneous collection related to historical CAT costs (CAT Fee Alert 2026-2, dated Apr. 1, 2026, available at https://catnmsplan.com/sites/default/files/2026-04/04.01.26-CAT-Fee-Alert-2026-2.pdf.). The sum of the fee rate of $0.000008 that will be in place in 2027, the historical CAT fee rate of $0.000002, and the estimated fee rate for exempted FAM 4 costs of $0.000022 would be $0.000032 per executed equivalent share, which is also smaller than other regulatory fees evaluated in the approval order.

CAT LLC has also requested that the Participants be granted relief that would allow them to recover the non-CAIS FAM 4 costs under a Historical Recovery Period shortened to one-year.[103] CAT LLC estimated that, "based on the recovery of $260,562,426 and based on recent executed equivalent share volumes, the estimated fee rate would be approximately $0.000022 for a one-year recovery period."[104] CAT LLC stated that this rate would be comparable to the fee rates previously charged to fund CAT costs (ranging from $0.000035 to $0.000001).[105]

Four commenters opposed a shortened Historical Recovery Period.[106] While one commenter stated that they are opposed to any recovery over any period of time, they stated that the "proposed one-year recovery period, however, would compound the harm to Industry Members and investors…"[107] Three commenters stated that the Commission has not analyzed the economic effects of imposing those Period 4 costs over the course of a single year, considering that the Funding Model imposes a Historical Recovery Period of two to five years.[108] One commenter stated that the proposed rate is not "comparable" to recent rates, as the "proposed rate equals one, is below one, and exceeds four. It is 22 times the most recent prospective fee and 11 times the most recent historical assessment."[109] The commenter also stated that the "request does not state the combined rate if this assessment runs alongside prospective fees."[110]

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103 Section 11.3(b)(i)(D)(I) of the CAT NMS Plan states that the Historical Recovery Period used in calculating the Historical Fee Rate may not be less than 24 months or more than five years.

104 See FAM 4 Exemptive Request Letter at 14.

105 Id.

106 See Native Firm Letter at 2, PTG Letter at 4-5, SIFMA Letter at 9, and Citadel Letter at 9.

107 SIFMA Letter at 9. See also PTG Letter at 4-5, and Citadel Letter at 9.

108 See PTG Letter at 4-5, SIFMA Letter at 9, and Citadel Letter at 9.

109 Native Firm Letter at 1.

110 Id.

The Commission concludes that it is appropriate in the public interest to grant the Participants' request for a limited exemption from CAT NMS Plan Section 11.3(b)(i)(D)(I) to shorten the period over which the Participant may seek full recovery of the exempted FAM 4 costs to one year. The Commission recognizes that it could, alternatively, extend Section 11.3(f)'s March 31, 2028, deadline for CAT billing to Industry Members to permit recovery of FAM 4 costs over a 24-month period, but declines to do so. The Commission adopted that deadline because it is "engaged in a comprehensive review of the CAT" that is "intended to include" the CAT's "design and functionality, the scope of information it collections, and an examination of CAT costs," and it would therefore have been "premature to adopt a new, permanent funding model."[111] The Commission today is separately proposing to rescind Rule 613 and implement a new reporting rule that would require self-regulatory organizations and broker-dealers to record and electronically report to a central repository substantially the same information required to be recorded and reported pursuant to Rule 613, the CAT NMS Plan, and related compliance rules, incorporating applicable exemptive relief issued by the Commission. This proposal would eliminate the diffuse ownership structure over the CAT and subject it to the Commission's direct control, such that the Commission anticipates that the Participants would dissolve CAT LLC and rescind the CAT NMS Plan. Extending the duration of CAT billing to Industry Members by CAT LLC beyond the current March 31, 2028 deadline would potentially introduce unnecessary complexity and uncertainty as it considers these potential changes to the

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111 See Funding Model, supra note 34 at 13411, 13422. See also CAT NMS Plan Section 11.3(f) ("Time Limitation. The Company, the Plan Processor and the Participants will not be permitted to bill or otherwise request the payment of CAT Fees or Historical CAT Assessments from Industry Members after March 31, 2028. No Industry Member can be required to directly contribute to the funding of the CAT by the Company, the Plan Processor, or any Participant after such date except for CAT Fees or Historical CAT Assessments billed to the Industry Member prior to March 31, 2028.").

CAT. Moreover, as discussed above, the estimated fee rate of $0.000022 for a one-year recovery period of the exempted FAM 4 costs is comparable to other approved rates for previous CAT costs.[112] As such, the Commission has determined that further exemptive relief to permit a one-year recovery period for the exempted FAM 4 costs is appropriate under the circumstances.

V. Conclusion

Based on the foregoing, the Commission believes that, pursuant to Section 36(a)(1) of the Exchange Act, this exemption is appropriate in the public interest and consistent with the protection of investors, and that pursuant to Rule 608(e), this 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 the perfection of a national market system to exempt the Participants from Sections 11.6(a)(i)(D), 11.6(a)(iii) and 11.3(b)(i)(D)(I) of the CAT NMS Plan in connection with the recovery of certain costs incurred during FAM 4.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36(a)(1) of the Exchange Act,[113] and Rule 608(e) of the Exchange Act[114] that exemptive relief is granted from:

1. Sections 11.6(a)(i)(D) and 11.6(a)(iii) of the CAT NMS Plan, to the extent that such provisions would prevent the recovery of Post-Amendment Industry Member Fees for non-CAIS FAM 4 costs in the amount of $390,843,639 (two-thirds of which, or $260,562,426, the Participants may seek to recover from Industry Members); and
2. Section 11.3(b)(i)(D)(I) of the CAT NMS Plan, as a one year recovery period is less than the 24-month minimum period otherwise required by the CAT NMS Plan.

By the Commission.

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112 See notes 99-102 and associated text supra.

113 15 U.S.C. 78mm(a)(1).

114 17 CFR 242.608(e).

Stephanie Fouse,

Assistant Secretary.