August 11, 2026

VIA EMAIL (tradingandmarkets@sec.gov)

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

Re: Request for Exemption from Certain Provisions 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

Dear Ms. Countryman:

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] respectfully requests that the Securities and Exchange Commission ("Commission" or "SEC") use its exemptive authority under Section 36 of the Securities Exchange Act of 1934 ("Exchange Act")[3] and/or Rule 608(e) of Regulation NMS under the Exchange Act[4] in connection with the recovery of certain costs incurred during the fourth and final Financial Accountability Milestone ("FAM 4") of the Plan. CAT LLC seeks exemptive relief to allow for the recovery of non-Customer and Account Information System ("CAIS") FAM 4 costs. The Participants believe that the requested exemptive relief is "necessary or appropriate in the public interest, and is consistent with the protection of investors,"[5] and is "consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal

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1 The twenty-eight Participants of the CAT NMS Plan are: 24X National Exchange LLC, BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, MIAX Sapphire, LLC, Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, Nasdaq Texas, LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Texas, Inc., NYSE National, Inc., and Texas Stock Exchange LLC. 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 this letter.

2 The Limited Liability Company Agreement of Consolidated Audit Trail, LLC is the CAT NMS Plan. Unless otherwise noted, capitalized terms are used as defined in Rule 613, in the CAT NMS Plan, or in this letter.

3 *See* 15 U.S.C. § 78mm(a)(1), which provides, in relevant part, that the "Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this title 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."

4 17 C.F.R. § 242.608(e), which provides that "[t]he Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system."

5 15 U.S.C. § 78mm(a)(1).

of impediments to, and perfection of the mechanisms of, a national market system,"[6] because it would prevent an excessive and grossly disproportionate penalty from being imposed in connection with FAM 4, which would not be a reasonable or equitable application of the financial accountability provisions adopted by the Commission.

The Commission imposed on the Participants the obligation to build the CAT pursuant to Rule 613. Rule 613 and the CAT NMS Plan provide that the substantial costs to build and operate the CAT are to be shared by the Participants and Industry Members.[7] Historically, the Participants funded 100% of CAT costs through voluntary, interest-free loans, based on the understanding that Industry Members would eventually bear a portion of those historical costs. In May 2020, the Commission adopted amendments to the CAT NMS Plan establishing target deadlines for four Financial Accountability Milestones ("FAMs") and financial penalties for missed deadlines, and preventing the Participants from establishing any fee pursuant to the CAT NMS Plan to recover historical costs until the Participants completed FAM 4.[8] The first three FAMs, relating to the completion of the transactional database, were completed on time.[9] In light of the successful completion of the transactional database, FINRA's Order Audit Trail System ("OATS") was retired effective September 1, 2021.[10] In 2024, Participant fee filings implementing a Historical CAT Assessment designed to recover from Industry Members certain historical costs incurred through completion of the first three FAMs became immediately effective. The vast majority of these costs relate to cloud hosting fees and Plan Processor operating fees associated with the development and operation of the transactional database.

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6 17 C.F.R. § 242.608(e).

7 *See, e.g.*, Rule 613(a)(1)(vii)(D), 17 C.F.R. § 242.613(a)(1)(vii)(D) (discussing how the CAT NMS Plan shall discuss the proposed allocation of estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors); CAT NMS Plan at Section 11.1(c) (providing that the Operating Committee shall "take into account fees, costs and expenses . . . incurred by the Participants on behalf of the Company . . . and such fees, costs and expenses shall be fairly and reasonably shared among the Participants and Industry Members"); Exchange Act Release No. 105003 (Mar. 16, 2026), 91 Fed. Reg. 13410, 13421-22 (Mar. 19, 2026) ("The CAT NMS Plan contemplates that the costs of the CAT are to be allocated between the Participants and Industry Members (which would include CAT Executing Brokers).").

8 *See* Exchange Act Release No. 88890 (May 15, 2020), 85 Fed. Reg. 31322 (May 22, 2020) ("Financial Accountability Milestones Release"); CAT NMS Plan at Section 11.6.

9 Each FAM is considered complete as of the date identified in the Participants' Quarterly Progress Reports, available at https://www.catnmsplan.com/implementation-plan. *See* Q3 2020 Quarterly Progress Report (Oct. 30, 2020) and Updated Q3 2020 Quarterly Progress Report (Jan. 29, 2021) (indicating that Initial Industry Member Core Equity and Option Reporting was completed on schedule on July 22, 2020); Q4 2020 Quarterly Progress Report (Jan. 29, 2021) (indicating that Full Implementation of Core Equity Reporting was completed on schedule by December 31, 2020); Q4 2021 Quarterly Progress Report (Jan. 17, 2022) (indicating that Full Availability and Regulatory Utilization of Transactional Database Functionality was completed on schedule by December 31, 2021).

10 *See* Exchange Act Release No. 90535 (Nov. 30, 2020), 85 Fed. Reg. 78395 (Dec. 4, 2020) ("OATS Retirement Filing") (approving FINRA's proposed rule change to delete the OATS rules once members are effectively reporting to the CAT); Exchange Act Release No. 92239 (June 23, 2021), 86 Fed. Reg. 34293 (June 29, 2021) (explaining that FINRA has determined that the CAT meets the accuracy and reliability standards approved by the Commission in the OATS Retirement Filing for purposes of eliminating the OATS rules and designating September 1, 2021 as the date on which FINRA would retire OATS).

FAM 4, requiring the completion of a novel and separate system for the submission of customer and account data known as CAIS, among other requirements, established a target deadline of December 30, 2022. Although the CAT NMS Plan requirements related to the transactional database were implemented prior to FAM 4, certain technical aspects of the CAIS database were not completed until July 15, 2024.[11] Unrelated to the CAIS delay, throughout Period 4 (January 1, 2022 through July 15, 2024), CAT LLC continued to operate the transactional database, incurring $364,219,549 in related technology costs and $26,624,090 in other CAT LLC operating costs—separate and apart from any CAIS-related costs. During Period 4, CAT LLC incurred CAIS-related costs of $99,307,505, or approximately 20% of overall Period 4 costs of $490,151,144.

Despite the limited nature of the delay, FAM 4 would prevent the recovery of *any* CAT costs incurred by CAT LLC during Period 4—including any costs related to the ongoing, successful operation of the transactional database that was completed on time. Based on the current funding model, which allocates one-third of CAT costs to the Participants and two-thirds of CAT costs to Industry Members,[12] absent the requested relief, FAM 4 would reduce the amount recoverable from Industry Members by $326,767,429.

This would be an unfair and grossly disproportionate outcome for several reasons.

First, 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[13] and rulemaking[14] during this entire period. During the period when certain aspects of CAIS were delayed, the Commission nevertheless acknowledged that "CAT is now operational and serves as a critical market oversight tool."[15] Similarly, the Securities Industry and Financial Markets Association ("SIFMA") has recognized that "[t]he transaction database became fully operational in December 2021, marking a major milestone in market surveillance infrastructure."[16] Accordingly, the Commission's central premise underlying the FAM penalties—*i.e.*, that missed deadlines "prevent regulators and market participants from reaping

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11 *See* 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).

12 *See* Exchange Act Release No. 105003 (Mar. 16, 2026), 91 Fed. Reg. 13410 (Mar. 19, 2026).

13 *See, e.g.*, Press Release, *SEC Charges Financial Services Professional and Associate in $47 Million Front-Running Scheme* (Dec. 14, 2022) https://www.sec.gov/newsroom/press-releases/2022-228 ("The SEC staff analyzed trading using the Consolidated Audit Trail (CAT) database to uncover [Defendant A]'s allegedly fraudulent trading and to identify how he profited by repeatedly front-running large trades by [Defendant B]'s employer.").

14 *See, e.g.*, Disclosure of Order Information, Exchange Act Release No. 96493 (Dec. 14, 2022), 88 Fed. Reg. 3786 (Jan. 20, 2023); Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Exchange Act Release No. 96494 (Dec. 14, 2022), 87 Fed. Reg. 80266 (Dec. 29, 2022); Order Competition Rule, Exchange Act Release No. 96495 (Dec. 14, 2022), 88 Fed. Reg. 128 (Jan. 3, 2023); Regulation Best Execution, Exchange Act Release No. 96496 (Dec. 14, 2022), 88 Fed. Reg. 5440 (Jan. 27, 2023).

15 *American Securities Association; Citadel Securities LLC v. Securities and Exchange Commission*, Brief for Respondent Securities and Exchange Commission at 19 (11th Cir. Apr. 15, 2024).

16 SIFMA, *Consolidated Audit Trail (CAT)*, https://www.sifma.org/issues/regulatory-compliance/consolidated-audit-trail (last visited July 30, 2026).

the regulatory benefits of the CAT, as well as potentially increase costs for Industry Members attempting to comply with the Participants' projected timelines"[17]—does not apply to the transactional database, which was fully operational on time.

Second, CAT LLC does not believe that the Commission can justify an all-or-nothing FAM 4 penalty lacking any consideration of materiality or proportionality. The delayed technical aspects of CAIS did not affect the overall utility of the transactional database, which was fully operational throughout Period 4. Based on the successful completion of the transactional database, the Commission approved the retirement of OATS, which was supported by Industry Members.[18] FAM 4 should not be a strict liability standard where any technical nonconformance automatically triggers an overly punitive outcome, notwithstanding the Commission's own conclusion that the CAT overall was operational. Moreover, imposing a $326 million strict liability penalty would endorse the principle that technical violations justify significant Commission penalties untethered from materiality or proportionality, which is at odds with recent statements noting a renewed emphasis on actual harm in other contexts.[19]

Third, shortly after FAM 4 was completed and only after the Participants had incurred tens of millions of dollars in costs in reliance on the Commission's original mandate to build CAIS, the Commission fundamentally altered CAIS, eliminating the collection of customer information and, in practical effect, unwinding the system as it was conceived when the target FAM deadline was established.[20] It is difficult to reconcile imposing a $326 million penalty with the Commission's later decision to fundamentally reshape the system at issue.

Given all this, treating FAM 4 as wholly unmet—and effectively imposing a $326 million strict liability penalty—based solely on the late completion of certain technical CAIS elements would ignore the reality that the transactional database was successfully completed and delivering its intended regulatory benefits by the deadline, rendering the resulting penalty grossly disproportionate and inconsistent with the purpose of the FAMs themselves.

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[17] Financial Accountability Milestones Release at 31335.

[18] *See, e.g.*, Letter from Ellen Greene, Managing Director, Equity & Options Market Structure, SIFMA, to Vanessa Countryman, Secretary, Commission (Sept. 24, 2020) ("The elimination of duplicative systems is one of the CAT's most critical issues, and we support FINRA's proposal to eliminate the reporting rules for the OATS."); William J. Leahey, Head of Regulatory Compliance, Refinitiv, to Vanessa Countryman, Secretary, Commission (Sept. 22, 2020) (advocating for the "urgent decommissioning of OATS").

[19] *See, e.g.*, Chairman Paul S. Atkins, Prepared Remarks Before SEC Speaks (Mar. 19, 2026) (noting that the SEC is "undergoing a course correction by prioritizing cases that provide meaningful investor protection and strengthen market integrity rather than technical rule violations in situations where investors have not been harmed").

[20] *See* Exchange Act Release No. 102386 (Feb. 10, 2025), 90 Fed. Reg. 9642 (Feb. 14, 2025) ("CAIS Exemption Order"); Exchange Act Release No. 104586 (Jan. 13, 2026), 91 Fed. Reg. 2164 (Jan. 16, 2026) ("CAIS Amendment Approval Order").

From the inception of Rule 613, the Commission has recognized that CAT costs would be shared between Participants and Industry Members.[21] The CAT NMS Plan provides that CAT costs "shall be fairly and reasonably shared among the Participants and Industry Members."[22] The FAMs were intended to ensure that the Participants acted diligently as they carried out the Commission's mandate to build the CAT, but they were never intended to shift the burden or risk of CAT solely onto the Participants, as evidenced by the Commission's emphasis on its "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," and assurances that "this ability, in particular, should alleviate the Participants' concerns regarding the potential impact of unforeseeable or reasonable delays."[23] This type of technical delay in certain aspects of CAIS, which was both unforeseeable and reasonable, is precisely the kind that should not alter the default assumption of CAT costs being fairly and reasonably shared between the Participants and Industry Members. To do so now belies both the intent of the FAMs and the SEC's prior statements regarding cost allocation, and unfairly creates a strict liability standard for Participants that renders relief necessary and appropriate in the public interest. Consistent with the rationale articulated in the adopting release and the cost allocation principles under the CAT NMS Plan, the Commission should exercise its broad exemptive authority to fairly and reasonably allocate FAM 4 costs between the Participants and Industry Members.[24]

Therefore, CAT LLC respectfully requests that the Commission provide exemptive relief to permit the recovery of non-CAIS Period 4 costs. If the relief is granted, based on the existing funding model, the Participants would be permitted to seek recovery of $260,562,426 in costs related to FAM 4 from Industry Members via a Historical CAT Assessment. The requested relief would avoid the grossly disproportionate outcome of denying recovery of any Period 4 costs related to aspects of the CAT that were completed on time.[25]

I. Background

A. Financial Accountability Milestones

Section 11.6 of the CAT NMS Plan requires four FAMs to be met by certain dates in order for the Participants to collect the full amount of any fees established by the Operating Committee, or implemented by the Participants, to recover a portion of Post-Amendment

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21 *See* 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.").

22 Section 11.1(c) of the CAT NMS Plan.

23 Financial Accountability Milestones Release at 31335.

24 CAT LLC previously submitted exemptive requests to the Commission on June 30, 2022, November 22, 2022, and May 22, 2023. *See* Letters from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated June 30, 2022, November 22, 2022, and May 22, 2023. This request for exemptive relief revises the prior requests submitted to the Commission on June 30, 2022, November 22, 2022, and May 22, 2023.

25 *See* Financial Accountability Milestones Release at 31328.

Expenses[26] from Industry Members ("Post-Amendment Industry Member Fees"). If the target deadline specified for a given FAM is met, Section 11.6 of the CAT NMS Plan would entitle the Participants to collect the full amount of any related Post-Amendment Industry Member Fees. However, if the date specified for a given FAM is not met, Section 11.6 of the CAT NMS Plan would reduce the amount of related Post-Amendment Industry Member Fees that the Participants may recover.[27]

The first three FAMs relate to completion of the transactional database and do not include any requirements relating to the reporting of customer information. As noted, the first three milestones, including full implementation of the transactional database, were completed by the deadlines set forth in the Plan. FAM 4—Full Implementation of CAT NMS Plan Requirements—requires the completion of CAIS, among other things, and 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).[28]

Section 11.6(a)(i)(D) of the CAT NMS Plan sets forth the target deadline for FAM 4 of December 30, 2022. It states that:

> [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

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26 "Post-Amendment Expenses" are defined as "all fees, costs, and expenses (including legal and consulting fees, costs, and expenses) incurred by or for the Company in connection with the development, implementation, and operation of the CAT from the effective date of this Section until such time as Full Implementation of CAT NMS Plan Requirements has been achieved." Section 11.6 of the CAT NMS Plan.

27 The Commission has consistently noted that "[t]o 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." *See, e.g.*, Exchange Act Release No. 89051 (June 11, 2020), 85 Fed. Reg. 36631, 36633 (June 17, 2020).

28 Section 1.1 of the CAT NMS Plan.

> 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.

Section 11.6(a)(iii) of the CAT NMS Plan sets forth the penalty for missing the target deadline of December 30, 2022. It states that:

> The amount of Post-Amendment Industry Member Fees that the Participants are entitled to collect for Periods 2, 3, and 4 will be reduced according to the following schedule if the Participants miss the deadline set forth for that Period:
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> (A) By 25% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by less than 90 days;
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> (B) By 50% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 90 days or more, but less than 180 days;
>
> (C) By 75% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 180 days or more, but less than 270 days; and
>
> (D) By 100% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 270 days or more.

Under Section 1.1 of the CAT NMS Plan, a FAM is considered complete as of the date identified in the Participants' Quarterly Progress Reports ("QPRs"). Each of the first three FAMs were completed on time. Due to the need to address certain technical defects associated with CAIS, however, Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024.[29] Under the schedule set forth in Section 11.6(a)(iii), the amount of Post-Amendment Industry Member Fees that the Participants could collect for Period 4 would be reduced by 100% due to this delay; however, as discussed below, various other factors should be taken into consideration.

B. <u>Total CAT Costs Incurred During FAM 4</u>

During Period 4 (from January 1, 2022 through July 15, 2024), total CAT costs were $490,151,144. These costs were funded by the Participants through voluntary, interest-free loans provided to CAT LLC. Even if the Participants were permitted to recover some portion of FAM 4 costs, it would not make the Participants fully whole because they forwent hundreds of millions of dollars in interest on these loans (based on a conservative interest rate).

Total costs incurred during Period 4 fall into three categories: (1) expenses incurred during FAM 4 related to the transactional database; (2) expenses incurred during FAM 4 related to CAIS; and (3) other operating costs incurred during FAM 4, largely comprised of fees for legal, consulting, and accounting support. Based on the current funding model, which allocates two-thirds of CAT costs to Industry Members and one-third of CAT costs to Participants, the

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29 *See* Q2 & Q3 2024 Quarterly Progress Report (July 29, 2024).

application of FAM 4 would prevent the Participants' recovery of $326,767,429 from Industry Members.

The following chart outlines the FAM 4 costs that would otherwise be recoverable by Participants from Industry Members under the current CAT funding model.

	FAM 4 Costs	**2/3 Recovery Per CAT Funding Model**
FINRA CAT Technology Costs – Non-CAIS	$364,219,549	$242,813,033
FINRA CAT Technology Costs – CAIS	$99,307,505	$66,205,003
Other Operating Costs	$26,624,090	$17,749,393
TOTAL FAM 4 COSTS	**$490,151,144**	**$326,767,429**

The $490 million total excludes remediation costs incurred by FINRA CAT relating to the delayed implementation of CAIS. As a contractual matter, FINRA CAT is prohibited from passing through remediation costs associated with the CAIS implementation to CAT LLC. Absent exemptive relief, the Participants would bear the full burden of $490,151,144 of Period 4 costs.

C. Requested Relief to Permit the Recovery of Certain FAM 4 Costs

The requested relief would permit recovery based on the amount of non-CAIS FAM 4 costs, or $390,843,639 out of total CAT costs of $490,151,144. Based on the current funding model, which allocates two-thirds of CAT costs to Industry Members and one-third of CAT costs to Participants, the requested relief would permit the recovery of $260,562,426.

The following chart provides a breakdown of the FAM 4 amounts that would be anticipated in a subsequent Historical CAT Assessment, should the SEC grant this exemptive request.

	FAM 4 Costs	2/3 Recovery Per CAT Funding Model	Anticipated 2/3 Recovery Per CAT Funding Model if Exemption Granted
FINRA CAT Technology Costs – Non-CAIS	$364,219,549	$242,813,033	$242,813,033
FINRA CAT Technology Costs – CAIS	$99,307,505	$66,205,003	---
Other Operating Costs	$26,624,090	$17,749,393	$17,749,393
TOTAL FAM 4 COSTS	**$490,151,144**	**$326,767,429**	**$260,562,426**

II. Discussion

A. The Transactional Database Was Successfully Completed on Time

As described above, the transactional database was fully implemented by December 31, 2021, and was fully operational during the entirety of Period 4. During the period when certain aspects of CAIS were delayed, the Commission acknowledged that "CAT is now operational and serves as a critical market oversight tool," and that "CAT has also contributed to the Commission's enforcement and regulatory work."[30] For example, the Commission announced in December 2022 that it relied on CAT data to uncover a multi-year front-running scheme that generated at least $47 million in illegal trading profits.[31] In addition, the SEC leaned heavily on CAT data in conducting the economic analyses for a package of market structure rule proposals in December 2022.[32] As these examples demonstrate, any delay in fully implementing certain

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30 *American Securities Association; Citadel Securities LLC v. Securities and Exchange Commission*, Brief for Respondent Securities and Exchange Commission at 19 (11th Cir. Apr. 15, 2024).

31 Press Release, *SEC Charges Financial Services Professional and Associate in $47 Million Front-Running Scheme* (Dec. 14, 2022) https://www.sec.gov/newsroom/press-releases/2022-228 (stating that SEC staff analyzed CAT data to uncover defendant's allegedly fraudulent trading and to identify how he profited by repeatedly front-running large trades by the other defendant's employer).

32 *See* Regulation Best Execution, Exchange Act Release No. 96496 (Dec. 14, 2022), 88 Fed. Reg. 5440, 5499 n.422 (Jan. 27, 2023) ("[t]his analysis used CAT data to examine the execution quality of marketable orders in NMS Common stocks and ETFs that belonged to accounts with a CAT account type of 'Individual Customer' and that originated from a broker-dealer MPID that originated orders from 10,000 or more unique 'Individual Customer' accounts during January 2022."); Order Competition Rule, Exchange Act Release No. 96495 (Dec. 14, 2022), 88 Fed. Reg. 128, 150 n.194 (Jan. 3, 2023) ("[t]he proposed level is supported by an analysis of the distribution of order activity across accounts reported to the Consolidated Audit Trail as being held for the benefit of an 'Individual Customer' for the first six months of 2022."); Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders, Exchange Act Release No. 96494 (Dec. 14, 2022), 87 Fed. Reg. 80266, 80334 n.625 (Dec. 29, 2022) ("[t]his estimate [of the number of broker-dealers with order entry systems] is obtained using consolidated audit trail data 'CAT' [sic] data from the month of June 2022."); Disclosure of Order Information, Exchange Act Release No. 96493 (Dec. 14, 2022), 88 Fed. Reg. 3786, 3791 n.86 (Jan. 20, 2023) ("[a]nalysis of Consolidated Audit Trail ('CAT') data from the first five months of 2022 found that wholesalers provide different execution quality to different retail brokers, and in particular that broker-dealers with higher average selection risk systematically receive higher effective spreads and lower price improvement than broker-dealers with lower adverse selection risk.").

aspects of CAIS did not prevent the Commission from concluding that "CAT is now operational and serves as a critical market oversight tool," and the Commission continued to "reap[] the regulatory benefits of the CAT" throughout Period 4.[33]

The Commission adopted the FAMs with the goal of seeking to ensure that the Participants acted diligently as they carried out the Commission's mandate to build the CAT. The Commission sought to encourage the timely development of the CAT by reducing the Participants' potential recovery of CAT costs in the event of delays. The transactional database was successfully completed on time and in accordance with the FAM deadlines. Accordingly, the central premise underlying the FAMs—*i.e.*, that missed deadlines "prevent regulators and market participants from reaping the regulatory benefits of the CAT"[34]—was absent with regard to the transactional database. Therefore, denying recovery of all Period 4 costs, the vast majority of which were attributed to the ongoing operation of the transactional database, would be an unfair and inequitable result.

B. Imposing a FAM 4 Penalty of $326 Million for the Delayed Implementation of Certain Aspects of CAIS Would Be Excessive and Grossly Disproportionate

When the Commission adopted the FAMs, it could not have reasonably envisioned imposing a $326 million penalty for CAIS-related defects while the transactional database remained fully operational and in active regulatory use. The unforeseen magnitude of this penalty only reaffirms the difficulty of completing an entirely novel regulatory reporting and surveillance system and that neither the Commission nor the Participants anticipated such an excessive and disproportionate penalty would be possible when the FAMs were adopted. Moreover, it would be inequitable for the Commission to impose a $326 million penalty tied to the completion of a system that the Commission later determined—only after the costs had already been incurred—should no longer exist as originally conceived when the Commission established FAM 4.[35]

C. Granting the Proposed Relief Would Be an Appropriate Use of the Commission's Exemptive Authority

When adopting the FAMs, the Commission provided assurances that its authority to grant exemptive relief regarding any aspect of the FAMs should alleviate any concerns regarding the potential impact of unforeseeable or reasonable delays. The Commission's decision to expressly highlight its general exemptive authority suggests that the availability of exemptive relief was a material consideration in adopting the FAMs. The unforeseeable nature of an excessively large reduction in recoverable costs resulting from the delay in certain limited aspects of one part of

33 Financial Accountability Milestones Release at 31335.

34 *Id.* at 31335.

35 *See* Exchange Act Release No. 102386 (Feb. 10, 2025), 90 Fed. Reg. 9642, 9644-45 (Feb. 14, 2025) ("CAIS Exemption Order") (concluding that "the regulatory benefit of collecting the names, addresses and years of birth for natural persons reported with transformed SSNs no longer justifies the associated risks"); Exchange Act Release No. 104586 (Jan. 13, 2026), 91 Fed. Reg. 2164 (Jan. 16, 2026) ("CAIS Amendment Approval Order").

the CAT system is exactly the type of circumstance that warrants the use of the Commission's exemptive authority.

When the SEC proposed the FAMs, both the Participants and Industry Members "recommended that the Commission adopt a more flexible approach that could account for the possibility of reasonable delays to CAT implementation" without giving rise to financial penalties.[36]

The Financial Information Forum ("FIF") explained that the "implementation milestones are all contingent on several challenging and aggressive deliverables, many of which will impact the development, testing, and roll-out of complex technology," and that "factors outside of the Participants' and/or Plan Processor's control may require the regulators to revisit the reasonableness and viability of implementation milestones to preserve the ultimate delivery of a useable CAT in a reasonable timeframe."[37] Accordingly, FIF recommended that the Commission "allow, 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)."[38]

SIFMA recognized that "potential delays in CAT implementation . . . may arise for legitimate reasons," and "'recommended that the Commission take reasonable delays into account in imposing the proposed financial penalties,' perhaps by 'suspending the proposed financial penalties based on the cause, foreseeability and attempts to mitigate the impact of the delay.'"[39] SIFMA further argued that "the CAT NMS Plan should expressly acknowledge that there may be reasons to modify the implementation deadlines due to a reasonable need for delay or to factors beyond anyone's control," and "also should include a formal mechanism to allow the SROs to request extensions for unpredictable complications that may arise."[40]

Another industry commenter "recommend[ed] that the SEC allow for some flexibility or reasonable delays in target deadlines, particularly in matters that may impact data quality."[41] This commenter recognized that "despite best efforts, unforeseen circumstances may occur where it may be in the collective best interest to extend a target deadline," and that "financial

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36 *See* Financial Accountability Milestones Release at 31335 (summarizing comments regarding the possibility of reasonable delays to CAT implementation).

37 Financial Accountability Milestones Release at 31332. *See* Letter from Christopher Bok, Director, Financial Information Forum, to Vanessa Countryman, Secretary, Commission, dated October 28, 2019 ("FIF Letter"), at 4, https://www.sec.gov/comments/s7-13-19/s71319-6355358-196251.pdf.

38 FIF Letter at 4.

39 Financial Accountability Milestones Release at 31335. *See* 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 ("SIFMA Letter"), at 2, https://www.sec.gov/comments/s7-13-19/s71319-6366765-195937.pdf.

40 SIFMA Letter at 2.

41 Financial Accountability Milestones Release at 31335, n.165. *See* Letter from Thomas Tesauro, President, Fidelity Capital Markets, to Vanessa Countryman, Secretary, Commission, dated October 28, 2019 ("Fidelity Letter"), at 5, https://www.sec.gov/comments/s7-13-19/s71319-6357608-196387.pdf.

penalties will create a degree of friction in the development process that is not conducive to the overall success of the CAT."[42]

The Participants stated that "the Commission and all market participants would benefit from a more flexible approach in which the Commission would assess the appropriateness of the recovery of Post-Amendment Industry Member Fees in the context of particular facts and circumstances in the event of a delay in meeting such a Milestone."[43]

In response, the Commission noted "it is sensitive to the concerns expressed by commenters."[44] The Commission emphasized its "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," and provided assurances that "this ability, in particular, should alleviate the Participants' concerns regarding the potential impact of unforeseeable or reasonable delays."[45]

This is precisely the type of circumstance that warrants exemptive relief. As discussed above, the transactional database was implemented and functional by the FAM 4 deadline. Nevertheless, due to the delayed implementation of certain aspects of CAIS, the application of FAM 4 would prevent recovery of all FAM 4 costs, even for those costs related to aspects of the CAT that were completed in a timely manner. CAT LLC does not believe that the Commission can justify imposing an all-or-nothing penalty of $326 million because certain technical aspects of CAIS were not fully implemented by the target deadline.

Consistent with the SEC's statements in its order and its broad exemptive authority under Section 36 of the Exchange Act, the Participants submitted three exemptive requests seeking full recovery of FAM 4 costs.[46] To date, however, the Commission has not acted on these requests. As noted, this request relates to the recovery of non-CAIS FAM 4 costs.

D. <u>The CAT NMS Plan's Cost Allocation Principles Fully Contemplate Costs to be Shared between the Participants and Industry Members</u>

The Commission decided when it adopted Rule 613 and has consistently reaffirmed that both the Participants and Industry Members should share in the costs of the CAT.[47] Here, all industry participants—the Commission, Participants, and Industry Members—benefitted from the regulatory oversight afforded by a fully operational CAT that was used in surveillance, enforcement, and rulemaking throughout Period 4. Industry Members would be unjustly enriched by FAM 4 absent exemptive relief because the Participants would bear the full burden

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42 Fidelity Letter at 5.

43 Financial Accountability Milestones Release at 31335 n.168. *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated October 28, 2019 ("Participant Letter"), at 10, https://www.sec.gov/comments/s7-13-19/s71319-6357609-196389.pdf.

44 Financial Accountability Milestones Release at 31335.

45 *Id.*

46 *See* Letters from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated June 30, 2022, November 22, 2022, and May 22, 2023.

47 *See generally* Exchange Act Release No. 67457 (July 18, 2012), 77 Fed. Reg. 45722, 45795 (Aug. 1, 2012).

of $490 million in reasonably incurred FAM 4 costs. In particular, the vast majority of FAM 4 costs were cloud hosting fees and Plan Processor operating fees associated with the development and operation of the transactional database, which was fully operational throughout Period 4. Any such penalty would overlook the specific intent expressed in Rule 613 that the Participants and Industry Members are to share in the costs of CAT. This circumstance—where certain technical defects with a single component of the larger CAT system would preclude recovery of $326 million in reasonably incurred costs, the vast majority of which were attributed to the ongoing operation of the transactional database—represents exactly the sort of scenario the Commission recognized in adopting the FAMs where it would be appropriate to exercise its exemptive authority.

III. Request for Exemptive Relief Related to FAM 4

For these reasons, CAT LLC requests that the Commission provide exemptive relief from the provisions in Section 11.6(a)(i)(D) and (iii) limiting the collection of the full amount of 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 with respect to the $390,843,639 in non-CAIS FAM 4 costs described above. With such exemptive relief, based on the existing funding model, CAT LLC would anticipate seeking recovery of $260,562,426 in costs related to FAM 4 from Industry Members via a Historical CAT Assessment (*i.e.*, two-thirds of $390,843,639).

IV. Request for Exemptive Relief regarding the Historical Recovery Period for Calculating a Historical CAT Assessment Related to FAM 4 Costs

To recover historical CAT costs pursuant to the funding model under the CAT NMS Plan, the Operating Committee is required to reasonably establish the length of the Historical Recovery Period used in calculating each Historical Fee Rate based upon the amount of the Historical CAT Costs to be recovered by the Historical CAT Assessment, and to describe the reasons for its length.[48] 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. However, Section 11.3(f) of the CAT NMS Plan would prohibit the billing of Historical CAT Assessments after March 31, 2028, which is less than 24 months from the date of this request. Accordingly, a shortened historical recovery period or relief from the March 2028 deadline is necessary to effectuate the requested relief.

To allow CAT LLC to establish a Historical CAT Assessment to recover the FAM 4 costs contemplated by the requested relief prior to the March 31, 2028 deadline, CAT LLC requests 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. This approach is consistent with the Commission's recognition that "it is appropriate for Industry Members to be charged a Historical CAT

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[48] Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

Assessment until all Historical CAT Costs for the Historical CAT Assessment are collected."[49] Similarly, notwithstanding the March 31, 2028 deadline, Section 11.3(b)(i)(D) of the CAT NMS Plan provides that "each Historical CAT Assessment . . . will remain in effect until all Historical CAT Costs for the Historical CAT Assessment are collected." Accordingly, a shortened historical recovery period would avoid the need to reconcile competing provisions of the Plan, while allowing any assessment to be collected within the March 2028 timeframe contemplated by the Commission.

Using a historical recovery period shorter than two years would continue to result in a reasonable fee rate. For example, CAT LLC currently estimates, 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.[50] This is comparable to the fee rates previously charged for Prospective CAT Fees and Historical CAT Assessments.[51] Accordingly, CAT LLC believes that the reduction of the historical recovery period to one year would result in a reasonable fee rate, and would allow CAT LLC to establish a Historical CAT Assessment to recover the FAM 4 amounts contemplated by the requested relief prior to the March 31, 2028 sunsetting requirement.

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Thank you for your attention to this matter. Please contact me if you have any questions or comments.

Respectfully submitted,

<u>/s/ Robert Walley</u>

Robert Walley
CAT NMS Plan Operating Committee Chair

cc: The Hon. Paul Atkins, Chairman
The Hon. Hester M. Peirce, Commissioner
The Hon. Mark T. Uyeda, Commissioner
Mr. Jamie Selway, Director, Division of Trading and Markets
Mr. Jon Kroeper, Deputy Director, Division of Trading and Markets
Mr. David Hsu, Assistant Director, Division of Trading and Markets

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49 Exchange Act Release No. 105003 (Mar. 16, 2026), 91 Fed. Reg. 13410, 13452 (Mar. 19, 2026).

50 The actual fee rate ultimately will depend on the total amount to be recovered, updated volume projections, and the length of the historical recovery period that is ultimately permitted.

51 Such fee rates have included fee rates for Prospective CAT Fees of $0.000035 (CAT Fee 2024-1), $0.000022 (CAT Fee 2025-1), $0.000009 (CAT Fee 2025-2), and $0.000001 (CAT Fee 2026-01), and for Historical CAT Assessments of $0.000013 (Historical CAT Assessment 1) and $0.000002 (Historical CAT Assessment 1A). *See* CAT Fee Alerts, https://www.catnmsplan.com/cat-fee-alerts.

Ms. Erika Berg, Special Counsel, Division of Trading and Markets
CAT NMS Plan Participants