SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106237; File No. 4-698]

Notice of a 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 Pursuant to Section 36 of the Securities Exchange Act of 1934 and/or Rule 608(e) of Regulation NMS Thereunder, and Request for Comment

September 1, 2026.

On 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] submitted a letter (the "FAM 4 Exemption Request")[3] requesting that

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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 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 Participants submitted to the Commission a proposed amendment to the CAT NMS Plan on August 29, 2019, which they designated as effective on filing. On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company, CAT LLC, which became the Company. See Securities Exchange Act Release No. 87149 (Sept. 27, 2019), 84 FR 52905 (Oct. 3, 2019). 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 Rule 613, in the CAT NMS Plan, or in the FAM 4 Exemption Request.

3 See letter from Participants to Vanessa Countryman, Secretary, Commission, dated August 11, 2026 (the "FAM 4 Exemption Request"). The FAM 4 Exemption Request is included as an Appendix to this notice.

the Securities and Exchange Commission ("Commission" or "SEC") use its exemptive authority under Section 36 of the Exchange Act[4] and/or Rule 608(e) of Regulation NMS thereunder[5] in connection with the recovery of certain costs incurred during the fourth and final Financial Accountability Milestone ("FAM 4") of the Plan. The Commission is publishing this notice to provide interested persons with an opportunity to comment.

I. Background

On July 18, 2012, the Commission adopted Rule 613 of Regulation NMS.[6] The goal of Rule 613 was to create a modernized audit trail system – the CAT – that would provide regulators with timely access to a comprehensive set of trading data, thus enabling regulators to more efficiently and effectively analyze and reconstruct market events, monitor market behavior, conduct market analysis to support regulatory decisions, and perform surveillance, investigation, and enforcement activities. On November 15, 2016, the Commission approved the CAT NMS Plan as the national market system plan required by Rule 613. While Rule 613[7] and the CAT NMS Plan contemplated that the costs of building the CAT may eventually be split between

4 15 U.S.C. 78mm(a)(1). Section 36(a)(1) of the Exchange Act gives the Commission the authority to exempt any person, security or transaction or any class or classes of persons, securities or transactions, conditionally or unconditionally, from any Exchange Act provision or any rule or regulation thereunder by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

5 17 CFR 242.608(e). Rule 608(e) 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."

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

7 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").

Industry Members[8] and the Participants,[9] during the development and implementation stages of the CAT, the Participants fully funded the historical costs associated with building the CAT through non-interest-bearing loans.[10] On September 9, 2019, after significant delays in the development and implementation of the CAT where the Participants had met neither the deadlines set forth in the CAT NMS Plan[11] nor their own proposed extensions of those deadlines,[12] the Commission proposed to amend the CAT NMS Plan to include provisions designed to increase operational transparency surrounding the implementation process and the Participants' financial accountability for the timely completion of the CAT.[13] On May 15, 2020, the Commission approved the FAM Proposal and amended the CAT NMS Plan to require the Participants to develop a complete implementation plan containing a detailed timeline with

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8 "Industry Member" means "a member of a national securities exchange or a member of a national securities association." See CAT NMS Plan, Article I, Section 1.1.

9 See 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."). See, e.g., Rule 613(a)(1)(vii)(D) of Regulation NMS under the Exchange Act.

10 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).

11 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.

12 See Securities Exchange Act Release No. 86901 (Sept. 9, 2019), 84 FR 48458, 48458–461 (Sept. 13, 2019) ("FAM Proposal") (discussing the various deadlines missed by the Participants).

13 Id.

objective milestones to achieve full CAT implementation.[14] Accordingly, the Participants developed and implemented Section 11.6 (Funding Incentives for Post-Amendment Expenses) of the CAT NMS Plan to establish a four phased implementation schedule, as well as funding penalties in the event that their chosen deadlines for the phased implementation schedule were missed—the four Financial Accountability Milestones ("FAMs"). Section 11.6 of the CAT NMS Plan requires the four FAMs to be met by certain deadlines in order for the Participants to recover the full amount of any fees established by the Operating Committee, or implemented by the Participants, to recover a portion of Post-Amendment Expenses[15] from Industry Members ("Post-Amendment Industry Member Fees") and imposed penalties on what could be recovered if a deadline was missed.[16]

The Participants stated that FAM 4—Full Implementation of CAT NMS Plan Requirements—requires the completion of the Customer and Account Information System ("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,

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14 See Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020) ("Financial Accountability Milestones Release"); See also, CAT NMS Plan, supra note 2, at Section 11.6.

15 "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.

16 The Participants stated that the first three FAMs, including full implementation of the transactional database, were completed by the deadlines set forth in the Plan. See FAM 4 Exemption Request, supra note 3, 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 10.

> 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).[17]

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 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:

17 Section 1.1 of the CAT NMS Plan.

(A) By 25% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by less than 90 days;

(B) By 50% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 90 days or more, but less than 180 days;

(C) By 75% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 180 days or more, but less than 270 days; and

(D) By 100% if the Participants miss the deadline set forth in Section 11.6(a)(i)(B)-(D) by 270 days or more.

The Participants stated that 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"), and that due to the need to address certain technical defects associated with CAIS, Full Implementation of CAT NMS Plan Requirements was completed on July 15, 2024.[18] Because July 15, 2024 was more than 270 days beyond FAM 4's December 30, 2022 deadline, 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 FAM 4 would be reduced by 100%.

II. Summary of the FAM 4 Exemption Request

The Participants requested exemptive relief from this 100% reduction penalty, as they stated that various other factors should be taken into consideration.[19] Specifically, the Participants stated that they, through CAT LLC, seek exemptive relief to allow for the recovery of non-CAIS FAM 4 costs from Industry Members. The Participants also requested an

[18] See FAM 4 Exemption Request, supra note 3, 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).

[19] See FAM 4 Exemption Request, supra note 3, at 7.

exemption from Sections 11.3(b)(i)(D)(I) and 11.3(f) of the CAT NMS Plan, which would allow for a shortened historical recovery period or relief from the March 31, 2028 deadline to recover Historical CAT Costs.

The Participants stated that the requested exemptive relief is "necessary or appropriate in the public interest, and is consistent with the protection of investors,"[20] and 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,"[21] because it would prevent "an excessive and grossly disproportionate" penalty from being imposed in connection with FAM 4.[22] The Participants stated that, in spite of what they believe to be the limited nature of the delay in FAM 4 CAIS implementation, 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.[23] The Participants further stated that such a result would not be a reasonable or equitable application of the financial accountability provisions adopted by the Commission.[24]

The Participants stated that FAM 4 required the completion of a novel and separate system for the submission of customer and account data known as CAIS, among other requirements, and established a target deadline of December 30, 2022.[25] The Participants stated that 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

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20 15 U.S.C. 78mm(a)(1).

21 17 CFR 242.608(e).

22 See FAM 4 Exemption Request, supra note 3, at 2.

23 Id.

24 Id.

25 Id. at 3.

until July 15, 2024.[26] The Participants stated that during Period 4 (from January 1, 2022 through July 15, 2024), total CAT costs were $490,151,144, and these costs were funded by the Participants through voluntary, interest-free loans provided to CAT LLC.[27] The Participants stated that 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.[28] The Participants further stated that 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 application of the 100% penalty under FAM 4 would prevent the Participants' recovery of $326,767,429 from Industry Members.[29] The Participants stated that, 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.[30] In addition, the Participants stated that 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.[31] The Participants provided the following chart, which outlines the FAM

26 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).

27 See FAM 4 Exemption Request, supra note 3, at 7.

28 Id.

29 Id. at 8.

30 Id. at 3.

31 Id. at 8.

4 costs that would otherwise be recoverable by Participants from Industry Members under the current CAT funding model.[32]

	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 Participants stated that this $490 million total excludes remediation costs incurred by FINRA CAT relating to the delayed implementation of CAIS, and that FINRA CAT is prohibited from passing through remediation costs associated with the CAIS implementation to CAT LLC.[33] The Participants stated that absent exemptive relief, they would bear the full burden of $490,151,144 of Period 4 costs.[34]

The Participants stated that, 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.[35] The Participants provided the following chart, which gives a breakdown of the FAM 4 amounts that would be anticipated in a subsequent Historical CAT Assessment, should the Commission grant this exemptive request.[36]

32 Id.

33 See FAM 4 Exemption Request, supra note 3, at 8.

34 Id.

35 Id.

36 Id.

	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**

The Participants stated that the exemptive relief should be granted because the vast majority of Period 4 costs related to the operation of the transactional database, which was fully implemented by December 31, 2021, and was fully operational during the entirety of Period 4.[37] The Participants stated that 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."[38] The Participants provided the examples of the Commission relying on CAT data in December 2022 to uncover a multi-year front-running scheme that generated at least $47 million in illegal trading profits,[39] and using CAT data in conducting the economic analyses for a

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37 Id. at 9.

38 Id. (citing 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)).

39 See FAM 4 Exemption Request, supra note 3, at 9. See also 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).

package of market structure rule proposals.[40] The Participants stated that the Commission adopted the FAMs with the goal of seeking to ensure that the Participants acted diligently while building the CAT and sought to encourage the timely development of the CAT by reducing the Participants' potential recovery of CAT costs in the event of delays.[41] The Participants stated that the transactional database was successfully completed on time and in accordance with the FAM deadlines, and thus the central premise underlying the FAMs—*i.e.*, that missed deadlines "prevent regulators and market participants from reaping the regulatory benefits of the CAT"[42]—was absent with regard to the transactional database.[43] Therefore, the Participants stated, 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.[44]

In addition, the Participants stated that when the Commission adopted the FAMs, it could not have reasonably envisioned imposing a strict liability $326 million FAM 4 penalty for CAIS-related defects while the transactional database remained fully operational and in active

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40 See FAM 4 Exemption Request, supra note 3, at 9. See also Regulation Best Execution, Exchange Act Release No. 96496 (Dec. 14, 2022), 88 FR 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 FR 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 FR 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 FR 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.").

41 Id. at 10.

42 Financial Accountability Milestones Release at 31335.

43 See FAM 4 Exemption Request, supra note 3, at 10.

44 Id.

regulatory use.[45] The Participants stated that the delayed technical aspects of CAIS did not affect the overall utility of the transactional database, which was fully operational throughout Period 4.[46] The Participants stated that based on the successful completion of the transactional database, the Commission approved the retirement of OATS, which was supported by Industry Members.[47] The Participants further stated that neither the Commission nor the Participants anticipated such an excessive and disproportionate penalty would be possible when the FAMs were adopted, and that it would be inequitable for the Commission to impose a $326 million penalty tied to the completion of CAIS when the Commission later determined—only after the costs had already been incurred—that CAIS should no longer exist as originally conceived when the Commission established FAM 4.[48]

The Participants stated that, when adopting the FAMs, the Commission expressly highlighted its general exemptive authority, suggesting that the availability of exemptive relief was a material consideration in adopting the FAMs.[49] The Participants 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

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

46 Id.

47 Id. See also, 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").

48 Id. See also Exchange Act Release No. 102386 (Feb. 10, 2025), 90 FR 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 FR 2164 (Jan. 16, 2026) ("CAIS Amendment Approval Order").

49 See FAM 4 Exemption Request, supra note 3, at 10.

that warrants the use of the Commission's exemptive authority.[50] The Participants stated 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"[51] without giving rise to financial penalties.[52] The Participants summarized sections from the Financial Information Forum ("FIF"), Securities Industry and Financial Markets Association ("SIFMA"), and Fidelity Capital Markets comment letters on the Financial Accountability Milestones Release suggesting that the Commission should allow for flexibility with the milestone dates and financial penalties, taking into account reasonable delays and unforeseen circumstances.[53] In their own comment letter on the Financial Accountability Milestones Release, 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."[54] The Participants stated that in Financial Accountability Milestones Release, the Commission noted "it

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50 Id. at 11.

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

52 See FAM 4 Exemption Request, supra note 3, at 11.

53 Id. See also, 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. 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. 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.

54 See FAM 4 Exemption Request, supra note 3, at 11. See also, 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.

is sensitive to the concerns expressed by commenters,"[55] that it has "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," and that "this ability, in particular, should alleviate the Participants' concerns regarding the potential impact of unforeseeable or reasonable delays."[56] The Participants stated that this is the type of circumstance that warrants exemptive relief. The Participants stated that, in the past, they submitted three exemptive requests seeking full recovery of FAM 4 costs, but the Commission has not acted on those requests. [57] The Participants distinguished this request for exemptive relief by stating that this request relates to the recovery of non-CAIS FAM 4 costs.[58] The Participants stated that 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.[59]

In addition, the Participants stated that the Commission has consistently reaffirmed that both the Participants and Industry Members should share in the costs of the CAT.[60] The Participants stated that 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.[61] The Participants

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55 Financial Accountability Milestones Release at 31335.

56 Id. See also, FAM 4 Exemption Request, supra note 3, at 12.

57 Id. See also, 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.

58 See FAM 4 Exemption Request, supra note 3, at 12.

59 Id. at 13.

60 Id. at 12.

61 Id. at 13.

stated that Industry Members would be unjustly enriched by FAM 4 absent exemptive relief because the Participants would bear the full burden of $490 million in reasonably incurred FAM 4 costs.[62] Additionally, the Participants stated that 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.[63] The Participants stated that 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.[64]

For these reasons, the Participants stated that they requested, through CAT LLC, 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.[65] The Participants stated that 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).[66]

The Participants further stated that in order to facilitate the recovery of historical CAT costs pursuant to the funding model under the CAT NMS Plan, the Operating Committee is

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62 Id.

63 Id.

64 See FAM 4 Exemption Request, supra note 3, at 13.

65 Id.

66 Id.

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.[67] 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.[68] 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.[69] Accordingly, the Participants stated that a shortened historical recovery period or relief from the March 2028 deadline is necessary to effectuate the requested relief.[70]

In order to establish a Historical CAT Assessment to recover the FAM 4 costs contemplated by the requested relief prior to the March 31, 2028 deadline, the Participants 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.[71] The Participants represented that using a historical recovery period shorter than two years would continue to result in a reasonable fee rate, as 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.[72] The Participants stated that this is comparable to the fee rates previously charged for Prospective CAT Fees and Historical CAT Assessments.[73]

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67 Id. See also, Section 11.3(b)(i)(D)(I) and Section 11.3(b)(iii)(B)(II) of the CAT NMS Plan.

68 See FAM 4 Exemption Request, supra note 3, at 13.

69 Id.

70 Id.

71 Id.

72 See FAM 4 Exemption Request, supra note 3, at 14.

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

III. Request for Comment

We request and encourage any interested person to submit written data, views, arguments, and comments regarding the FAM 4 Exemption Request, including whether the Commission should grant the request.

Comments should be received on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number 4-698 (CAT FAM 4 Exemption Request) on the subject line.

Paper Comments:

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 4-698 (CAT FAM 4 Exemption Request). This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (http://www.sec.gov/rules/sro.shtml). Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

For further information, you may contact David Hsu, Office of Market Supervision, Division of Trading and Markets, at (202) 551-5500, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.