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October 5, 2026

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Via Email to rule-comments@sec.gov

Re: 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 (Release No. 34-106237; File No. 4-698)

Dear Ms. Countryman:

We write on behalf of the Financial Industry Regulatory Authority, Inc. ("FINRA")[1] in response to the above-captioned notice[2] of an August 11 Letter by CAT LLC requesting that the Securities and Exchange Commission use its exemptive authority under Section 36 of the Exchange Act and/or Rule 608(e) of Regulation NMS[3] in connection with the recovery of certain costs incurred during the fourth and final

[1] This letter does not reflect or represent the views of FINRA CAT, LLC, a distinct corporate subsidiary of FINRA that acts as the CAT Plan Processor pursuant to an agreement with Consolidated Audit Trail, LLC ("CAT LLC").

[2] *See* Request for Comment, Securities Exchange Act Release No. 106237 (Sept. 1, 2026), 91 FR 56691 (Sept. 3, 2026) ("September 1 Notice").

[3] 15 U.S.C. § 78mm(a)(1); 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."

Financial Accountability Milestone ("FAM 4") of the National Market System Plan Governing the Consolidated Audit Trail ("Plan" or "CAT NMS Plan").

FINRA agrees with CAT LLC that imposing the FAM 4 penalty would be grossly disproportionate and that permitting recovery of CAT-related costs from broker-dealer members of Participants ("Industry Members") is consistent with the Exchange Act, the CAT NMS Plan's cost-allocation principle that costs should be shared between the Participants and Industry Members, and the Commission's own statements in adopting FAM 4.[4] FINRA therefore concurs that the facts warrant the exercise of the Commission's exemptive authority.

FINRA believes, however, that the relief should extend to *all* costs incurred during the FAM 4 period ("Period 4"), without exclusion. As submitted, CAT LLC's request would exclude $99.3 million in costs related to the Customer and Account Information System ("CAIS") database,[5] and thus would deny recovery of the $66.2 million Industry Member share of those costs.[6] Having funded the CAT for many years, on the understanding that CAT costs would be shared with Industry Members, CAT LLC should be allowed to recover the Industry Member share of all Period 4 costs, rather than bear the full cost itself.[7]

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[4] *See* Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, dated August 11, 2026 (the "August 11 Letter"), at 2, 4-5; *see also* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322, 31335 (May 22, 2020) ("FAM Adopting Release") (noting that the Commission's ability to grant exemptive relief from FAM requirements, "in particular, should alleviate the Participants' concerns regarding the potential impact of unforeseeable or reasonable delays.").

[5] Following the Commission's 2025 order, *see infra* Part I.C, CAIS does not exist in the form that CAT LLC had been obligated to construct under the FAMs. Its replacement is now referred to as the "Reference Database." For simplicity, this letter uses "CAIS" to refer to both.

[6] *See* August 11 Letter at 8 (reporting $99,307,505 in CAIS-related costs, of which $66,205,003 represents the two-thirds share allocable to Industry Members under the current funding model).

[7] As discussed in Part II, *infra*, FINRA does not concede that the Financial Accountability Milestones are valid under applicable law either now or when initially adopted, and it expressly reserves all rights without waiver to challenge their lawfulness and/or application. However, solely for the purpose of providing its response to the Commission's September 1

BACKGROUND

In 2012, the Commission directed the self-regulatory organizations ("SROs") to establish a consolidated audit trail system that would enable regulators to track information related to orders received, routed, and executed across the securities markets.[8] The Commission did so by adopting Rule 613 of Regulation NMS, which required the SROs "to submit a national market system ... plan to create, implement, and maintain a consolidated order tracking system, or consolidated audit trail."[9]

In response, in 2015, the SROs "filed with the [Commission] ... a National Market System Plan Governing the Consolidated Audit Trail."[10] Each SRO—each of which is a "Participant" in the Plan—has a single vote on the Operating Committee.[11] The Commission approved the CAT NMS Plan in 2016.[12] The Plan prescribed a system of unprecedented complexity, specifying in detail the information that Industry Members and Participants must report and imposing rigorous processing and linkage requirements.

Before and after the Commission approved the Plan, CAT LLC worked to build the CAT to the specifications of Rule 613 and the Plan. Undertaking a project of unprecedented scope and complexity, CAT LLC achieved key operational milestones (*e.g.,* implementing daily transaction reporting for Industry Members and Participants and completing full availability and regulatory utilization of the transaction database functionality enabling order lifecycle analysis for equities and options). These milestones were built upon layers of critical functionality and technological

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Notice, FINRA notes that, even if the FAMs were valid when adopted, later events preclude the Commission from enforcing the FAMs against CAT LLC to prevent recovery of CAIS or non-CAIS Period 4 costs.

[8] Consolidated Audit Trail, 77 FR 45722 (Aug. 1, 2012) ("Rule 613 Adopting Release"); *see also* 75 FR 32556, 32556 (June 8, 2010).

[9] Rule 613 Adopting Release, 77 FR at 45722.

[10] Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail, 81 FR 30614, 30614 (May 17, 2016).

[11] *Id.* at 30616; *see also* CAT NMS Plan § 4.3(a).

[12] Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) ("CAT NMS Plan Approval Order").

infrastructure (*e.g.,* implementing data ingestion, processing, validation, security, cloud storage, retention, and regulatory access and usage capabilities).

When it approved the Plan, the Commission contemplated a Central Repository that would be sized to handle "more than 58 billion records per day"[13] and estimated that it would cost the Participants and Industry Members between $37.5 million and $65 million to build the Central Repository and between $36.5 million and $55 million a year to operate it.[14] These estimates fell far short of actual volumes and operating costs. By the second half of 2025, the CAT was processing an average of more than 700 billion events per day,[15] and the Commission has recognized that "a primary driver of the increase in CAT costs has been increases in trading activity, which is outside of the control of the Participants."[16]

Several years after approving the Plan, in 2020, the Commission took the extraordinary step of amending the CAT NMS Plan to unilaterally impose financial penalties if CAT LLC failed to meet Commission-imposed target deadlines for the CAT—*i.e.*, the FAMs ("FAM Amendments").[17] The FAM Amendments, which added

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[13] CAT NMS Plan Approval Order, 81 FR at 85023 n.3944.

[14] CAT NMS Plan Approval Order, 81 FR at 84854 (estimating "the costs to build the Central Repository" and its "annual operating costs").

[15] *See* Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated Feb. 24, 2026 ("February 2026 CAT LLC Letter"), at 3 (reporting average daily volume of 793 billion events in the third quarter of 2025 and 704 billion events in the fourth quarter of 2025).

[16] Securities Exchange Act Release No. 105003 (Mar. 16, 2026) 91 FR 13410, 13474 (Mar. 19, 2026) ("2026 Funding Order").

[17] *See* Securities Exchange Act Release No. 88890 (May 15, 2020), 85 FR 31322 (May 22, 2020); CAT NMS Plan at Section 11.6. In the September 1 Notice, the Commission states that "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." *See* Request for Comment, Securities Exchange Act Release No. 106237 (Sept. 1, 2026), 91 FR 56691, 56692-93 (Sept. 3, 2026). That is incorrect: the Commission proposed and adopted Section 11.6. *See* Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail, 84 FR 48458 (Sept. 13, 2019) ("FAM Proposing Release"); FAM Adopting Release, 85 FR 31322.

Section 11.6 to the Plan, conditioned CAT LLC's cost recovery on meeting defined operational milestones by specific deadlines.[18] The first three FAMs covered the period through December 31, 2021.[19] The deadline for FAM 4, "Full Implementation of CAT NMS Plan Requirements," was December 30, 2022.[20] At their most punitive, these conditions entirely eliminate recovery from Industry Members for a delay of 270 days or more, regardless of the cause of the delay, the utility of the audit trail's operational functions, the absence of articulable harm, or the materiality of the missed target.[21]

CAT LLC's efforts have resulted in the successful completion of the audit trail, on which regulators rely to oversee the U.S. markets. Yet absent exemptive relief, FAM 4 would deny recovery of all Period 4 costs because of delays that did not materially impair use of the CAT, in a project that has proved to be substantially more complex and costly than the Commission imagined or estimated. The CAT's actual costs have far exceeded the Commission's initial estimates—building and operating the CAT from 2016 through July 15, 2024, cost more than $900 million.[22] From the start, the projections of the CAT's costs and data volumes were misaligned with CAT's scale and complexity.

Before the FAM 4 deadline, the CAT transactional database was fully functional and available for use by regulators, including the Commission, to perform critical oversight of the securities markets.[23] In addition, CAT LLC had made meaningful progress on the CAIS database.[24] As of September 30, 2022, 99% of Industry

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[18] CAT NMS Plan § 11.6(a).

[19] *See* CAT NMS Plan § 11.6(a)(i)(C).

[20] *See* CAT NMS Plan § 11.6(a)(i)(D); *see also id.* § 1.1 (defining "Full Implementation of CAT NMS Plan Requirements").

[21] *See* CAT NMS Plan § 11.6(a)(iii)(D).

[22] *See* Letter from Robert Walley, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, dated June 22, 2026 (noting that the Participants extended over $900 million in voluntary, interest-free loans to build and operate the CAT under the Commission's direction).

[23] *See* CAT Q3 2022 Quarterly Progress Report (Oct. 28, 2022), at 5-6, https://www.catnmsplan.com/sites/default/files/2022-10/CAT-Q3-2022-QPR.pdf; August 11 Letter at 9.

[24] *See* Letter from Michael Simon, CAT LLC, CAT NMS Plan Operating Committee Chair to Vanessa Countryman, Secretary, dated November 22, 2022 ("November 2022 Request").

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.[25] 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.[26] Thus, although certain limited aspects of FAM 4 were not completed until July 15, 2024,[27] by December 2022, the system, including aspects of CAIS, was operational and in use. By any reasonable measure, CAT LLC substantially performed its obligations under the CAT NMS Plan despite the unprecedented scale and cost of the regulatory mandate and factors outside CAT LLC's control.

CAT LLC sought exemptive relief before the FAM 4 deadline passed. On November 22, 2022, CAT LLC asked the Commission to provide an exemption from FAM 4 requirements until June 30, 2023.[28] On May 22, 2023, CAT LLC amended and replaced that request, asking the Commission to extend the FAM 4 target date to August 31, 2024, on three conditions: that the CAT system, including CAIS, remain operational while outstanding issues were addressed; that CAT LLC meet regularly with Commission staff; and that CAT LLC not collect Period 4 fees until August 31, 2024, or any earlier date on which FAM4 was satisfied.[29] All FAM 4 requirements were satisfied on July 15, 2024—within the extension that CAT LLC had requested nearly fourteen months earlier. The Commission did not act on the request. CAT LLC's August 11 Letter revises that request.[30]

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[25] *Id.* at 4.

[26] *Id.*

[27] *See* CAT 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.

[28] November 2022 Request at 1, 6-7. CAT LLC also submitted an earlier June 30, 2022 letter seeking to extend a CAIS reporting deadline from July 11, 2022 to December 12, 2022. The Advisory Committee for the CAT NMS Plan expressed strong support for this extension at the time given the impact on Industry Member reporting. *See* Letter from Michael Simon, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, dated June 30, 2022, at 5.

[29] *See* Letter from Brandon Becker, CAT NMS Plan Operating Committee Chair, to Vanessa Countryman, Secretary, Commission, dated May 22, 2023, at 2, 10-11 ("May 2023 Request").

[30] *See* August 11 Letter at 5 n.24.

The August 11 Letter advances the same core rationale as earlier requests. The principal change is to exclude $99.3 million in CAIS-related costs incurred during Period 4, which would deny recovery of the $66.2 million Industry Member share of those costs.[31] The August 11 Letter continues to describe the CAIS-related delay as "limited" and "technical" in nature and states that the delay "did not affect the overall utility of the transactional database."[32] Yet the August 11 Letter narrows the requested relief by $99.3 million in costs without explaining the change or identifying any change in the underlying justification, facts, or circumstances that would warrant it. It states only that, whereas past requests sought full FAM 4 cost recovery, the current request "relates to the recovery of non-CAIS FAM 4 costs."[33] Although the August 11 Letter reflects CAT LLC's position, it acknowledges that "individual Participants may not fully agree with every statement" in it.[34] FINRA does not agree with the exclusion of CAIS-related costs. As explained below, the record supports relief for all Period 4 costs and provides no reasoned basis for treating CAIS costs differently.[35]

DISCUSSION

An agency acts arbitrarily and capriciously when it fails to consider an important aspect of the problem, offers an explanation that runs counter to the evidence before it, or otherwise fails to articulate a rational connection between the facts found and the choice made.[36] As the Eleventh Circuit recently explained in the CAT funding context, "[a]gencies must consider material changes in circumstances," and a prior analysis that has been overtaken by later events "does not control the reasonableness

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[31] *See* August 11 Letter at 8.

[32] *See* August 11 Letter at 3-4. The August 11 Letter also notes that the Commission relied heavily on CAT data for its own enforcement efforts and rulemaking during the period of the delay, evidencing that "any delay in fully implementing certain aspects of CAIS did not prevent the Commission from concluding that 'CAT is now operational and serves as a critical market oversight tool.'" *Id.* at 9-10.

[33] August 11 Letter at 12.

[34] August 11 Letter at 1 n.1.

[35] The Commission's exemptive authority is not limited to the terms of CAT LLC's request. Section 36 authorizes the Commission, "by rule, regulation, or order," to exempt "any person" or "any class or classes of persons." 15 U.S.C. § 78mm(a)(1).

[36] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

of the Commission's actions" today.[37]

Section 36 of the Exchange Act grants the Commission authority to exempt any person, security, or transaction from Exchange Act requirements whenever the Commission determines that doing so is necessary or appropriate in the public interest and consistent with the protection of investors. In addition, Rule 608(e) of Regulation NMS authorizes the Commission to exempt any self-regulatory organization from the requirements of Rule 608 if "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."[38] The Commission must exercise its authority through reasoned decisionmaking that satisfies governing constitutional and statutory limits.

For example, the D.C. Circuit recently vacated a Commission order denying a Section 36 exemption because it "perfunctorily restat[ed] the statutory policy goals" in response to "a credible showing" that an exemption would be in the public interest and "consistent with the Commission's grant of exemptions in the past."[39] That ruling applies with particular force here. In adopting the FAMs, the Commission declined to build flexibility for reasonable delays into the FAMs themselves, pointing instead to its "authority to grant exemptive relief from any requirement associated with a particular Financial Accountability Milestone," which it said "should alleviate the Participants' concerns regarding the potential impact of unforeseeable or reasonable delays."[40] Declining to exercise that authority here—where CAT LLC sought relief before the deadline and met the extended date it proposed, without any objection from the Commission—would require a reasoned explanation that the record does not contain or support.

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[37] *Am. Sec. Ass'n v. SEC*, 147 F.4th 1264, 1274-78 (11th Cir. 2025).

[38] 17 CFR 242.608(e).

[39] *Doe v. SEC*, 176 F.4th 32, 35 (D.C. Cir. 2026) (vacating denial of request for Section 36 exemption from whistleblower-award requirements); *see also Coinbase, Inc. v. SEC*, 126 F.4th 175, 202 (3d Cir. 2025) (the SEC "must explain its reasoning so that we can assure ourselves that its decision considered all important aspects presented by the petition and resulted from reasoned decisionmaking."); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (agency must "display awareness that it *is* changing position" and "show that there are good reasons for the new policy").

[40] FAM Adopting Release, 85 FR at 31335.

FINRA and CAT LLC agree that the CAT system was substantially complete by the end of December 2022 and that applying the FAM 4 penalty to bar recovery of the costs of building and operating the CAT would be inequitable. However, the August 11 Letter provides no reasoned basis for distinguishing between "non-CAIS costs" and "CAIS costs." As discussed in **Part I**, the reasons for relief apply fully to CAIS costs, and the record does not support excluding them. As discussed in **Part II**, the record likewise would not support denying relief altogether.

I. The reasons for relief apply fully to CAIS costs, and the record provides no basis for excluding them.

CAT LLC's August 11 Letter advances four main arguments in support of exemptive relief. *First*, it contends that the CAT was substantially complete and operational by December 2022, with only limited aspects remaining to be completed.[41] *Second*, it argues that applying the FAM 4 penalty would produce an excessive and grossly disproportionate result because it would deny recovery of substantial Period 4 costs despite the successful operation of the CAT and the completion of the first three FAMs on time.[42] *Third*, it maintains that the delay in completing the remaining CAIS requirements was the kind of "unforeseeable or reasonable" delay for which the Commission has said its exemptive authority would provide relief.[43] *Finally*, it says exemptive relief is necessary to preserve the CAT NMS Plan's fundamental principle that CAT costs should be fairly and reasonably shared between the Participants and Industry Members.[44] Each argument is sound, and together the arguments establish that the Commission should grant full FAM 4 relief.

None of the foregoing arguments supports excluding CAIS costs. The only apparent basis for the exclusion is that certain functionality of CAIS was not completed by the FAM 4 target date. That rationale does not withstand scrutiny. CAT LLC sought an extension before the deadline and completed FAM 4 within the extended period that it later requested; the $99.3 million in CAIS costs paid for functionality that was delivered and used; and the Commission has since eliminated much of the customer-identifying information that CAIS was designed to collect.

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[41] *See* August 11 Letter at 9-10.

[42] *See* August 11 Letter at 10.

[43] *See* August 11 Letter at 10-12.

[44] *See* August 11 Letter at 12-13.

A. CAT LLC sought relief before the deadline and completed FAM 4 within the extension requested.

As described above, CAT LLC asked the Commission to extend the FAM 4 target date before that date passed. In May 2023, it asked that the date be extended to August 31, 2024, on conditions designed to protect regulators and Industry Members: CAIS would remain operational; CAT LLC would meet regularly with Commission staff; and the Participants would not collect Period 4 fees until FAM 4 was satisfied or the extended date arrived.[45] CAT LLC completed FAM 4 on July 15, 2024, well in advance of the requested extension, on which the Commission never acted.

That sequence is precisely what the Commission contemplated when it adopted the FAMs and pointed to its exemptive authority as the means of addressing "unforeseeable or reasonable delays."[46] CAT LLC invoked that authority before the deadline, refined its request in May 2023 with conditions of Commission oversight, and then beat the extended date it had proposed. Granting that relief now would not allow delay to occur "without consequence";[47] the Participants have waited years to recover costs that they financed through non-interest-bearing loans, forgoing hundreds of millions of dollars in interest.[48] Relief of this kind would also be consistent with the Commission's practice of excluding from the FAM requirements any Plan requirement from which the Commission has granted exemptive relief.[49] And because the requested extension necessarily encompassed the component whose completion determined the FAM 4 date, it supplies a principled basis for relief extending to all Period 4 costs.

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[45] May 2023 Request at 10-11.

[46] FAM Adopting Release, 85 FR at 31335.

[47] *Id.* (stating that the Commission was "adopting a mechanism that would not allow further delays to occur without consequence").

[48] *See* August 11 Letter at 7 (Participants "forwent hundreds of millions of dollars in interest on these loans").

[49] *See, e.g.*, Securities Exchange Act Release No. 89051 (June 11, 2020), 85 FR 36631, 36633 n.39 (June 17, 2020) ("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.").

The Securities Industry and Financial Markets Association opposed the 2023 request on the ground that CAT LLC had not delivered "a fully functional CAT."[50] But in May 2023, CAIS had been operational and Industry Members had been reporting to it daily since November 2022—for six months. There was "no indication of any data loss," and the CAIS data then available "provide[d] regulatory utility and efficiencies that augment[ed] the CAT transactional database."[51]

B. The disproportionate penalty rationale undermines, rather than supports, imposition of a penalty for CAIS-related costs.

CAT LLC's August 11 Letter states that the CAT was substantially complete and operational by December 2022, with a fully functioning transactional database and only limited aspects of CAIS remaining outstanding.[52] Indeed, CAT LLC explained in May 2023 that "CAIS has been implemented and is currently operational," that "Industry Members have been reporting required data to CAIS on a daily basis since November 2022," and that "the vast majority of the transaction data [was] benefiting from the reported CAIS data."[53] The Commission cannot justify imposing FAM 4 penalties without identifying the CAIS limitations that remained after December 2022 and explaining why they were material enough to justify a $66.2 million penalty. Nor is it clear how the Commission could identify or quantify any resulting harm to regulators, investors, Industry Members, or the markets.

Technical incompleteness—especially in the face of substantial investment and regulatory usability—is not a proxy for quantifying harm associated with delayed or unavailable functionality. The Commission must distinguish between the functionality that had been delivered and the discrete functionality that remained, identify the costs associated with each, and assess any harm caused by the absence of particular functionality. If the Commission believes that the circumstances warrant recovery of "non-CAIS costs," it must still explain why the CAIS deficiencies justify a $66.2

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[50] *See* Letter from Securities Industry and Financial Markets Association to Vanessa Countryman, Secretary, Commission, dated Dec. 19, 2023, at 1.

[51] May 2023 Request at 2, 4, 7.

[52] *See* August 11 Letter at 3, 9.

[53] May 2023 Request at 2.

million penalty. Stated simply, a $66.2 million penalty is not necessarily a proportionate one.[54]

The disproportionality concerns are heightened by the magnitude of the remaining penalty. CAT LLC's narrowed request would forgo recovery of $66.2 million—the Industry Member share of $99.3 million in CAIS costs. That consequence would attach to CAIS functionality that was delivered by CAT LLC, in connection with a system that the Commission has since substantially narrowed in scope. By itself, that amount exceeds the high end of the Commission's 2016 estimate.[55] Nothing in the record identifies a harm that would justify any penalty—let alone explains why a $66.2 million penalty bears a reasonable relationship to the nature, duration, consequences, or cause of any remaining CAIS deficiencies.

C. The Commission's later CAIS actions confirm that full FAM 4 relief is consistent with the purpose of its exemptive authority.

The Commission's later actions concerning CAIS further support full relief. CAT LLC itself observes that it is "difficult to reconcile imposing a $326 million penalty with the Commission's later decision to fundamentally reshape the system at issue."[56] The "system at issue" is CAIS, and CAT LLC's observation applies with particular force to CAIS costs. In February 2025, after CAT LLC had already incurred substantial expense implementing CAIS as required by the Commission, the Commission exempted core CAIS requirements that were a fundamental aspect of building CAIS, and in January 2026 it approved amendments materially altering the system's original design and reflecting its reduced scope.[57] In so doing, the

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[54] Nor does the August 11 Letter explain how forgoing CAIS-related recovery—a change from CAT LLC's prior requests—makes the FAM 4 reduction proportionate.

[55] CAT NMS Plan Approval Order, 81 FR at 84854 (estimating between $37.5 million and $65 million to build the Central Repository). In contrast, the proposed $66.2 million penalty equals roughly $3.5 million per month for the delay until July 2024 when all technical requirements for CAIS were met.

[56] August 11 Letter at 4.

[57] *See* Securities Exchange Act Release No. 102386 (Feb. 10, 2025), 90 FR 9642, 9644-45 (Feb. 14, 2025) (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"); Press Release on "Exemption From the Requirement to Report Certain Personally Identifiable Information to the Consolidated Audit Trail" (noting that "such

Commission concluded that the regulatory benefit of collecting certain personally identifying information no longer justified the associated risks. Those actions reflect the Commission's later judgment that the regulatory benefits and risks of portions of the original CAIS design differed materially from the premises on which those requirements were adopted, showing the arbitrariness of the original requirements under the FAMs and justifying full relief.

The Commission's later actions do not alter the requirements that applied at the time of the FAM 4 deadline. They do, however, constitute materially changed circumstances relevant to its present exercise of exemptive authority. The Commission is now deciding whether to maintain a substantial financial consequence imposed for delays in completing a system that it later determined should be fundamentally reduced in scope. That intervening judgment of the Commission weighs against singling out all CAIS costs for uniquely unfavorable treatment and provides an additional, independent reason to grant full FAM 4 relief.

D. The cost-sharing rationale does not explain why CAIS costs should be treated differently, and the record does not support such a distinction.

CAT LLC's August 11 Letter also correctly invokes the principle, reflected in the CAT NMS Plan, that CAT costs should be fairly and reasonably shared among the Participants and Industry Members.[58] That principle does not support a distinction between CAIS and the remainder of the CAT. CAIS costs were incurred as part of the Commission-mandated CAT, funded through the same Participant loans to CAT LLC, and subject to the same Commission-approved allocation framework as other CAT costs. Full relief from the FAM 4 penalty would *not* shift all CAIS costs to Industry Members; Industry Members would remain responsible for no more than two-thirds of those costs under the Commission-approved funding model.

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information is not necessary to achieve CAT's objectives") available at: https://www.sec.gov/newsroom/press-releases/2025-38-exemption-requirement-report-certain-personally-identifiable-information-consolidated-audit-trail; Securities Exchange Act Release No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026) ("CAIS Amendment Approval Order") (approving elimination of names, addresses, and years of birth for all customers and deletion of previously reported data).

[58] CAT NMS Plan § 11.1(c).

As discussed above, neither any proportionality-based principle nor the Commission's later CAIS actions support the distinction. Proportionality requires a relationship between the remaining deficiencies and the financial consequence imposed; the Commission's later CAIS actions reflect its own judgment that significant elements of CAIS were not necessary to achieve the CAT's regulatory purposes, and they constitute materially changed circumstances relevant to the exercise of exemptive authority. The distinction instead rests on nothing more than the label "CAIS costs." The Commission cannot adopt that categorical distinction as a reason for treating CAIS costs differently without supplying a reasoned basis, which the request itself does not contain and the record does not support. Excluding CAIS costs is not necessary to preserve the Plan's cost-sharing framework and would be arbitrary, capricious, an abuse of discretion, and contrary to law.

II. The record likewise does not support denying exemptive relief entirely.

Part I shows that the reasons for relief apply fully to CAIS costs, such that there is no principled basis for treating them differently from other Period 4 costs. For the same reasons, denying relief altogether would be unjustified: it would impose the full FAM 4 penalty on all Period 4 costs, including the costs of operating a transactional database that was completed on time and used throughout Period 4. Denial of an exemption allowing recovery of both CAIS costs and non-CAIS costs (including denial of exemptive relief altogether) would perpetuate the arbitrary and capricious imposition of the FAM 4 penalty. The Commission should not resolve the pending request as though the legality of the FAMs were settled.

The Commission's imposition of the FAM framework itself raises substantial questions regarding the scope of the Commission's authority. That framework misuses an NMS plan mechanism to impose financial consequences on CAT LLC when implementation milestones are not achieved by prescribed deadlines. Yet the Exchange Act provides other mechanisms whereby the Commission may address an SRO's failure to discharge its regulatory responsibilities, including oversight, examination, and enforcement authorities specifically designed for that purpose.[59] The FAMs are thus an extraordinary form of regulatory penalty imposed through the NMS plan process rather than through the statutory mechanisms that Congress

[59] Exchange Act § 19(h), 15 U.S.C. § 78s(h).

expressly provided.[60] At a minimum, this structure raises substantial questions concerning whether the FAM 4 penalties were arbitrary and capricious, or otherwise contrary to law, and whether the Commission exceeded the authority conferred by Rules 608 and 613 and the Exchange Act provisions that those rules implement.[61]

When the Commission adopted the FAMs, implementation of the CAT had been underway for years. CAT LLC had engaged vendors, undertaken substantial technical work, and entered into contractual arrangements governing the construction and operation of the system. The Commission therefore imposed the FAM deadlines and associated cost-recovery conditions on a project already in full swing, not one that could be designed, planned for, and contracted for with those deadlines and consequences in mind. That sequencing matters, because CAT LLC could not unilaterally alter existing architecture, vendor commitments, implementation dependencies, or other settled arrangements merely because the Commission attached new financial consequences to completion dates.

Indeed, the history of shifting interpretations and requirements after the adoption of the FAMs underscores this unfairness. Repeatedly throughout the implementation period, the Commission modified CAT system requirements through exemptive relief and implementation adjustments. For example, two exemptive orders were issued on December 16, 2020, granting temporary exemptive relief from provisions related to the online targeted query tool, data linkage specifications, and reporting and re-processing requirements.[62] After a subset of Participants moved to stay and petitioned for review of those orders, the Commission issued a third order that "granted temporary exemptive relief from the same requirements addressed in the 2020 Orders until July 31, 2024, and set forth new conditions" for CAT LLC to qualify

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[60] *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (invoking the canon of statutory construction that the "specific governs the general," especially where Congress "'deliberately targeted specific problems with specific solutions'") (citation omitted).

[61] *See West Virginia v. EPA*, 597 U.S. 697, 721-24 (2022) ("Both separation of powers principles and a practical understanding of legislative intent make us 'reluctant to read into ambiguous statutory text' the delegation claimed to be lurking there. … The agency instead must point to 'clear congressional authorization' for the power it claims.")

[62] 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).

for exemptive relief.[63] That third order also further extended the July 31, 2024, deadline to January 31, 2025.[64] On November 2, 2023, following extensive discussions in connection with petitions for review filed by certain Participants, the Commission issued a fourth and final order clarifying and revising the same requirements addressed in the December 16 orders.[65] These developments underscore that 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.

In adopting the FAMs, the Commission did not meaningfully analyze the extent to which CAT LLC had already committed itself to a particular implementation path through vendor contracts, infrastructure decisions, and other arrangements made years before the FAMs were imposed. Instead, the Commission pointed to its exemptive authority as a means of addressing "unforeseeable or reasonable delays."[66] The Commission now has the benefit of experience with the system's full scale and cost. Failing to grant full FAM 4 relief in 2026 would compound the earlier miscalculations by imposing an unjustified and disproportionate penalty that the Commission did not adequately consider or analyze when it adopted the FAMs.

The Commission also adopted the FAM framework before it had approved the mechanism by which CAT costs would ultimately be allocated and recovered, meaning the Commission could not have adequately considered the reasonableness of the potential FAM penalties when it adopted them.[67] The FAM Amendments conditioned recovery of substantial CAT expenses on achieving future milestones, yet the Commission had not approved the funding model through which those expenses would later be assessed; it could not know what costs Industry Members would ultimately bear.

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[63] Securities Exchange Act Release No. 97530 (May 19, 2023), 88 FR 33655, 33656 (May 24, 2023) (discussing Securities Exchange Act Release No. 95234 (July 8, 2022), 87 FR 42247 (July 14, 2022)).

[64] 88 FR at 33657.

[65] Securities Exchange Act Release No. 98848 (Nov. 2, 2023), 88 FR 77128 (Nov. 8, 2023).

[66] *See* FAM Adopting Release, 85 FR at 31335.

[67] Moreover, nothing in the Commission's order imposing the FAMs references any financial analysis of the potential economic impact of the FAM penalty.

As a result, the Commission could not have meaningfully evaluated in 2020 how the FAMs would interact with the eventual allocation of costs among Participants and Industry Members or the magnitude of the burden that those penalties would ultimately impose. The Commission thus set the conditions for forfeiting future recovery rights in the dark—before it knew how that recovery would operate in practice. That disconnect is particularly significant where the financial consequences now at issue involve hundreds of millions of dollars, and where later developments have revealed that the CAT's actual costs and complexity differed dramatically from what was originally contemplated.

The public-interest consequences of the FAM penalties also bear on the Commission's exercise of discretion. Nothing in the record identifies a harm that would justify a penalty—let alone explains why a $66.2 million penalty bears a reasonable relationship to the nature, duration, consequences, or cause of any remaining CAIS deficiencies.

The Eleventh Circuit's recent decision in *American Securities Association* underscores why these concerns matter. *First*, it confirms that a prior analysis "does not control the reasonableness of the Commission's actions" once circumstances have changed.[68] *Second*, it recognizes that the Commission "must consider material changes in circumstances," including the growth in the CAT's costs, rather than continue to rely on historical projections.[69] *Third*, it reaffirms that when the Commission departs from the CAT framework's original cost-allocation principles, it must provide a reasoned explanation for doing so.[70]

The same principles fully apply here. The FAM framework was adopted based on aged assumptions about the CAT's implementation, timing, and costs that experience has since overtaken. The actual CAT system proved significantly larger, more complex, and thus more expensive than originally anticipated. Thus, the Commission may not simply apply the FAMs today as though its early assumptions remain

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[68] *Am. Sec. Ass'n*, 147 F.4th at 1277-78.

[69] *Id.* at 1277.

[70] *Id.* at 1276 (finding "no reasoned justification or explanation for the Commission's about-face" from the "understanding that self-regulatory organizations and their broker-dealer members were to share the costs").

unchanged.[71] Nor can it ignore that the CAT's regulatory framework contemplates shared responsibility for CAT costs among Participants and Industry Members.

FINRA recognizes that *American Securities Association* was concerned with the burden on broker-dealers of an unexplained shift of CAT costs to them. But the principle that the court enforced—that CAT costs are to be shared, and that departures from that understanding require a reasoned explanation—applies in both directions: failing to grant relief that would permit CAT LLC to recover the full Industry Member share of Period 4 costs would shift 100% of those costs to CAT LLC. Any decision to limit recovery would require the Commission to explain why changed circumstances that were sufficient to require reconsideration in the funding context are irrelevant in the context of penalizing CAT LLC.

Accordingly, whatever the Commission concludes about CAIS costs, it should not deny relief altogether. Such an outcome would cast doubt on the lawfulness, reasonableness, and continued application of the FAM framework itself. The Commission itself contemplated using its exemptive authority to address "unforeseeable or reasonable delays."[72] In light of the substantial questions surrounding the FAM framework, the changed realities of the CAT's implementation, and CAT LLC's substantial compliance with its obligations, the Commission should exercise that authority to permit full recovery of all Period 4 costs.

CONCLUSION

For the foregoing reasons, FINRA requests that the Commission exercise its authority under Section 36 of the Exchange Act or Rule 608(e) of Regulation NMS to provide exemptive relief from the FAMs to permit CAT LLC to recover Period 4 costs, including both CAIS and non-CAIS costs.

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[71] Indeed, as noted *supra* in Part I.C, the Commission's own actions with respect to CAIS since February 2025 underscore how far the premise of FAM 4 has shifted.

[72] *See* FAM Adopting Release, 85 FR at 31335.

Sincerely,

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