CITADEL | Securities

November 30, 2020

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

Re: Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security (File No. S7-10-20)

Dear Ms. Countryman:

Citadel Securities appreciates the opportunity to provide comments to the Securities and Exchange Commission ("Commission") on its proposal ("Proposal") to amend the national market system plan governing the consolidated audit trail ("CAT NMS Plan") to enhance the security of the consolidated audit trail ("CAT").[1]

The Proposal outlines a number of ways in which the Commission is seeking to amend the CAT NMS Plan to enhance the security of the CAT and the protection of CAT data. The Commission, including Chairman Clayton himself, has emphasized on numerous occasions that the security and confidentiality of CAT data is a top priority for the Commission, and Citadel Securities has consistently supported the Commission's efforts to address the need for a robust and secure CAT.[2] To that end, we strongly support the Proposal and the Commission's thoughtful and thorough efforts to achieve this essential goal. We have previously shared with the Commission and its staff some of our concerns regarding a number of open issues, including many related to CAT data security, that we believe must be addressed before the self-regulatory organizations participating in the CAT ("Participants") are granted broad access to CAT data,[3] and we believe the Proposal addresses many of these previously expressed concerns. In particular, we appreciate

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1 Securities Exchange Act Release No. 89632 (Aug. 21, 2020), 85 FR 65990 (Oct. 16, 2020).

2 *See* Jay Clayton, Chairman, SEC, "Update on Consolidated Audit Trail; Temporary COVID-19 Staff No-Action Letter; Reducing Cybersecurity Risks" (Mar. 17, 2020) (hereinafter, "March Statement"); Jay Clayton, Chairman, SEC, "Statement on Status of the Consolidated Audit Trail" (Sept. 9, 2019); Jay Clayton, Chairman, SEC, Testimony on "Oversight of the U.S. Securities and Exchange Commission" Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Dec. 11, 2018) ("As I have stated before, as the SROs continue to make progress in the development, implementation and operation of the CAT, I believe that the Commission, the SROs and the plan processor must continuously evaluate their approach to the collection, retention and protection of PII and other sensitive data. More generally, I have made it clear that the SEC will not retrieve sensitive information from the CAT unless we have a regulatory need for the information and believe appropriate protections to safeguard the information are in place."); Jay Clayton, Chairman, SEC, Testimony on "Oversight of the U.S. Securities and Exchange Commission" Before the Committee on Financial Services, U.S. House of Representatives (June 21, 2018).

3 We have attached hereto our letter of June 1, 2020 to Mr. Brett Redfearn, Director, Trading and Markets. That letter outlines a number of the concerns previously expressed by Citadel Securities on the topic of CAT data security and Participant access to CAT data.

the Commission addressing questions as to the scope of the Participants' permitted "regulatory use" of CAT data and clarifying that Participants cannot use CAT data for the analysis or development of new order types or other commercial initiatives, even if those initiatives include a regulatory component such as a rule filing.[4] We believe that this clearly defined approach to "regulatory use" of the CAT data as described in the Proposal and the proposed amendments to Section 8.1 of Appendix D to the CAT NMS Plan comports with the purposes of the CAT and appropriately restricts the Participants' use of CAT data.

As noted above, we broadly and firmly support the Proposal and the Commission's proposed amendments to the CAT NMS Plan. This letter describes several critical enhancements that we believe would strengthen the Proposal and some of the amendments. Specifically, we recommend three primary enhancements to the Proposal for the Commission's consideration:

- The proposed data confidentiality policies ("PDCPs") should be filed with the Commission as a CAT NMS Plan amendment and subject to the notice-and-comment process under SEC Rule 608 rather than be subject only to approval by the CAT Operating Committee ("OpCo"). This approach would provide two primary benefits: it would enhance transparency and provide the public with an opportunity to review and comment on the PDCP before it is finalized, and it would enhance Commission oversight of the PDCP to ensure it satisfies the Commission's expectations. Moreover, these benefits can be achieved in a way that does not raise concerns involving the security of the CAT.

- The process for seeking an exception from the Secure Analytical Workspace ("SAW") Environment requirements should be enhanced. Specifically, the CAT NMS Plan should require a Participant to explain why it is necessary for the Participant to conduct its analysis outside of the SAW Environment and to detail what data the Participant intends to download (including whether it will download data from other Participants). Additionally, the request for an exception should be subject to notice-and-comment rulemaking to provide additional transparency and Commission oversight.

- The Security Working Group ("SWG") proposed by the Commission should be expanded to include Chief Information Security Officers ("CISOs") from the broker-dealer community, or other similar outside experts, rather than be limited to CISOs of the plan processor and the Participants. Expanding the composition of the SWG would increase the experience and insights brought to the SWG and can be achieved in a way that improves—but does not compromise—CAT security.

Each of these recommendations is described in more detail below.

[4] *See* Proposal, at 214 ("The Commission also believes it is important to prohibit Participants from using CAT Data in situations where use of CAT Data may serve both a surveillance or regulatory purpose, and commercial purpose, and, more specifically prohibit use of CAT Data for economic analyses or market structure analyses in support of rule filings submitted to the Commission pursuant to Section 19(b) of the Exchange Act ('SRO rule filings') in these instances.").

1. Filing the PDCPs with the Commission as a CAT NMS Plan Amendment

As part of the Proposal, the Commission states that it believes that "the CAT NMS Plan should be modified and supplemented to provide additional specificity concerning data usage and confidentiality policies and procedures, and to strengthen such policies and procedures with expanded and new requirements designed to protect the security and confidentiality of CAT Data."[5] To achieve this, the Commission is proposing, among other things, to consolidate existing provisions of the CAT NMS Plan that address required confidentiality policies and procedures into a single section and to amend the CAT NMS Plan to require PDCPs that are "identical across Participants."[6] As the Commission observes in the Proposal, a requirement that the PDCPs be "identical" would "result in shared policies that govern the usage of CAT Data by Participants and apply to all Participants equally."[7] The Proposal would require that the PDCP be approved by the OpCo and be made publicly available (subject to the redaction of any sensitive proprietary information) on each Participant's website or on the CAT NMS Plan website. Finally, the Proposal would require that each Participant annually engage an independent accountant to perform a compliance examination. Acknowledging that Participants may have different organizational structures and operations, the Commission observes that each Participant's procedures effectuating the PDCP, as well as the usage restriction controls developed by each Participant in accordance with the PDCP, would likely differ from those of other Participants and would therefore not be subject to the same approval, examination, and publication requirements.

We fully agree with the Commission's approach to require that each of the Participants adopt an identical PDCP and that it be publicly available. Rather than having only the OpCo approve the PDCP, however, we believe that it is essential that the PDCP be filed as an amendment to the CAT NMS Plan itself. Such an approach would ensure that the PDCP is reviewed and approved by the Commission and would subject the PDCP to notice and comment, which would provide needed transparency into the critical issues of CAT security.

Requiring the PDCP to be filed as an amendment to the CAT NMS Plan has a number of benefits that further the Commission's goals. First, such an approach would provide additional transparency into the process and would give the public the ability to review and provide comments on the PDCP before it is adopted, approved, and made available on a website. The Proposal's requirement that the PDCP be made publicly available recognizes the importance of transparency and accountability in this process; requiring it be adopted through the notice-and-comment process under Rule 608 would further that goal.

Second, requiring the PDCP to be filed as an NMS plan amendment subjects the PDCP to independent review and approval by the Commission. Under the currently proposed amendment, the OpCo proposes and then approves restrictions developed by the same self-regulatory organizations that sit on the OpCo. Independent review and public approval by the Commission

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5 *Id.* at 183.

6 *Id.* at 183-86.

7 *Id.* at 184.

would help ensure that the PDCPs are not compromised by the potential for conflict inherent in that structure.

Third, having the PDCP adopted as part of the CAT NMS Plan would impose formal legal obligations on the Participants that are appropriate and necessary given the critical importance of CAT data security. Specifically, because SEC Rule 613(h)(1) requires each Participant to comply with the provisions of the CAT NMS Plan, by adopting the PDCP as part of the CAT NMS Plan, a violation of the PDCP by a Participant would carry with it liability that would not otherwise attach if the PDCP were approved solely as a policy of each Participant.[8]

Additionally, adopting the PDCP as part of the CAT NMS Plan facilitates the Commission's requirement that all Participants adopt an identical PDCP.[9] The Commission notes in the Proposal that the PDCP must be the same for all SROs, and as such would define the framework and rules all Participants would need to follow. It is this common policy that each Participant would then need to implement through the adoption of individual procedures, which would detail how each specific Participant intends to effectuate the PDCP requirements. Because the PDCP must necessarily be general enough to apply to a variety of different Participants, it should require very little, if any, redacting as suggested in the Proposal. We agree that the Participant-specific procedures may contain some proprietary data, but the PDCP itself should not.

Finally, given the sensitive nature of the trading data stored in CAT, the Commission should specifically require the PDCP to include details on the extent to which one Participant can access CAT data submitted by another Participant and the circumstances under which such access would be allowed (e.g., cross-market surveillance by joint members). Having such details be subject to notice-and-comment will provide the Commission with valuable feedback as to whether the information provided by the SROs are sufficiently specific to evaluate whether the PDCP strikes an appropriate balance between protecting industry members' and their customers' trading IP, while still ensuring the SROs can effectively and robustly utilize CAT for the surveillance and oversight purposes intended.[10]

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[8] We note that, even if the Commission determines not to require that the PDCP be filed as an amendment to the CAT NMS Plan, we believe that the PDCP is a "stated policy, practice, or interpretation" under SEC Rule 19b-4, which requires self-regulatory organizations to file with the Commission "proposed rule changes," including any "stated policy, practice, or interpretation." *See* SEC Rule 19b-4(a)(6) (defining a "stated policy, practice, or interpretation" as "[a]ny material aspect of the operation of the facilities of the self-regulatory organization"). The Commission has made clear that the CAT is a facility of each Participant. *See, e.g.*, Securities Exchange Act Release No. 79318, at 166 (Nov. 15, 2016) (order approving the CAT NMS Plan).

[9] Adopting the PDCP as part of the CAT NMS Plan also facilitates adoption by exchanges that join the CAT NMS Plan in the future: by becoming a Participant in the CAT NMS Plan, the exchange would automatically be subject to the PDCP.

[10] We therefore recommend the PDCP include, at a minimum, language stating that, absent a well-defined cross-market surveillance program, each exchange Participant will access only the CAT data from other Participants that it needs to conduct or support surveillance of its members' activities on its own exchange.

2. Exceptions from the SAW Environment Requirements for Bulk Downloads

As part of the Proposal, the Commission observes that it "preliminarily believes that efforts should be taken to minimize the attack surface associated with CAT Data; to maximize security-driven monitoring of CAT Data, both as it is reported to the CAT and as it is accessed and utilized by regulators; and to leverage, wherever possible, security controls and related policies and procedures that are consistent with those that protect the Central Repository."[11] To help achieve these goals, the Commission proposes to amend the CAT NMS Plan to require the CAT Plan Processor to provide "Secure Analytical Workspaces" – or "SAWs" – that can be used by the Participants as the only means of accessing and analyzing customer and account data and, unless an exception is granted, as the only means of accessing and analyzing CAT Data through the user-defined direct query and bulk extract tools. The Commission proposes, as part of the amendments, to provide an ability for a Participant to request and receive an exception from the SAW requirements due to the Commission's belief "that some Participants may have a reasonable basis for not using a SAW to access CAT Data via the user-defined direct query or bulk extract tools and may have built a sufficiently secure non-SAW environment in which these tools may be employed."[12] The Commission, however, sought comments specifically on whether Participants should only be able to employ user-defined direct query and bulk extract tools in connection with a SAW.[13]

We believe that, particularly in light of the Commission's amendments to the CAT NMS Plan to require the provision of SAWs by the Plan Processor, bulk downloading CAT data outside of the CAT should be prohibited. Indeed, one of the most effective measures the Commission could take to achieve its goal of minimizing the attack surface associated with CAT data is to prohibit the bulk extraction of CAT data outside of the CAT itself. If the Commission chooses not to prohibit bulk downloads, we support the Proposal's approach to imposing necessary restrictions on the bulk extraction of data from CAT outside of the SAW environment, and we agree with the Commission that the SAW must be monitored by, and under the security controls of, the Plan Processor. These requirements provide a sound baseline to help protect CAT data. If Participants are permitted to bulk download, we also generally support amending the CAT NMS Plan to provide that a Participant must file an exception request that would allow, following a detailed and specific exception request process, the bulk extraction of specific CAT order and trade data for regulatory purposes. Moreover, we agree with the Proposal's requirement that such a request should only be granted if the Participant can demonstrate it has all the required security procedures, subjects itself to annual independent examination, and establishes that its external environment generally matches all SAW security requirements.

To further enhance the exception process, we recommend that the proposed exception include two additional provisions. First, we believe that a Participant requesting an exception from the SAW usage requirements should be required to provide reasons why it needs to bulk download CAT data to perform analyses outside of the CAT, and why the SAW is insufficient for its purposes. To support the Commission's overall goals of enhancing security, we believe that, as a

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11 Proposal at 25.

12 *Id.* at 58-59.

13 *See id.* at 73 (Question 40).

general principle, a Participant should not be allowed to bulk download CAT data simply because it can demonstrate it has a system that is as secure as the SAW. Quite simply, even if this were the case, two copies of CAT data create more risk than one copy of CAT data, even if both databases are equally secure. To minimize the risks associated with creating multiple copies of CAT data, a Participant should also have to demonstrate why bulk downloading of CAT data outside of the SAW is necessary, particularly in light of the Participant's ability to access data it already receives as part of its business (e.g., orders sent to and trades executed by the Participant's matching engine) to accomplish its surveillance tasks. In addition, the Participant should also have to detail what data it intends to download and whether it will download data from other Participants.[14]

Second, we believe that the exception process should include additional requirements that enhance transparency. To that end, we recommend that, in addition to the approval process set forth in the Proposal, any application by a Participant to seek an exception that would allow it to bulk download CAT data should require the filing of a proposed rule change under Section 19 of the Exchange Act and approval of the Commission before being effective. Such a filing, having been informed by a security analysis from the SWG and having already been approved by the CAT Chief Compliance Officer ("CCO") and CISO under the proposed process, would further subject the application to public notice and comment and would require Commission approval prior to being effective. We do not believe that the CAT CCO and CISO should be the sole approving authority for these applications, and the applications, as currently proposed, address only the security concerns of downloaded data. Although the CAT CCO, the CAT CISO, and the SWG are in a position to assess the security representations, we believe that the general public and the Commission should also be provided the opportunity to evaluate the reasons a Participant wants to bulk download CAT data and the extent to which it intends to do so. Importantly, we are not suggesting that the Participant would be required to detail in its proposed rule change its security controls and design specifications. Rather, we believe the Participant's explanation of its need for the exception and the scope of CAT data it intends to download should be subject to the transparency and oversight that notice and comment rulemaking is designed to provide. In addition, we believe it is appropriate to provide public notification on a regular basis of high-level bulk downloading statistics so that industry participants and the public are aware of the frequency and extent to which CAT data is being extracted and which Participants are engaged in bulk downloading outside of the CAT.

3. Expanding the Composition of the Security Working Group

We strongly support the Commission's proposed amendment to the CAT NMS Plan that would require the OpCo to establish and maintain the SWG formally. As proposed, the SWG would be comprised of the CAT CISO and the CISO or deputy CISO of each Participant. The SWG would be tasked with advising the CAT CISO and the OpCo with respect to issues involving: (1) information technology matters that pertain to the development of the CAT System; (2) the development, maintenance, and application of the Comprehensive Information Security Program;

[14] Any Participant that relies on another Participant to conduct surveillance activities (e.g., through a 17d-2 agreement or a regulatory services agreement) should also be required to describe why that Participant needs to bulk download data in light of those agreements.

(3) the review and application of required confidentiality policies; (4) the review and analysis of third party risk assessments, including the review and analysis of results and corrective actions arising from such assessments; and (5) emerging cybersecurity topics.

We recommend that the SWG be enhanced by expanding its composition to include CISOs from the broker-dealer community or other similar outside experts. We believe there is much practical insight to be gained from, and little risk presented by, such inclusion as the Participants generally do not maintain end-customer data. We believe adding this expertise and experience to the SWG would enhance the SWG's ability to advise on many of the various issues contemplated in the Proposal, and because the SWG is limited to an advisory role, the addition of members independent of any Participant should not raise concerns related to governance or policy-making.

In addition, we note that the Participants have already created a Security Working Group, which the Proposal would require be formalized. The existing Security Working Group has already requested and received assistance from CISOs from the broker-dealer community (who were subject to non-disclosure agreements) to help develop and vet the CAT Customer ID framework. Consequently, there is already precedent for the inclusion of broker-dealer CISOs in security-related CAT matters, and it is our understanding that this cooperation has proved mutually beneficial to the current Security Working Group and to the industry CISO participants.

As a general matter, we believe that the strongest security will come from creating processes that are inherently secure rather than processes that rely on the process itself being kept secret. Adding broker-dealer CISOs to the SWG should not compromise CAT security and, in contrast, is likely to enhance the security of the CAT by bringing in additional expertise and experience on a number of issues and across a wider cross section of market participants. Of course, to the extent that the SWG needs to cover a topic that cannot be shared with its non-Participant members of the SWG, we believe it would be appropriate for the SWG to have the ability to enter into executive session if needed to protect such confidences. By preserving the ability of the SWG to meet in executive session, the SWG would be improved by adding additional insights, experience, and expertise with essentially no risk that CAT security could be compromised.

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Citadel Securities appreciates the opportunity to provide comments on the Proposal. Please feel free to contact us with any questions regarding these comments.

Respectfully,

/s/ Stephen John Berger

Managing Director

Global Head of Government & Regulatory Policy

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Attachment

Letter to the Division of Trading and Markets

RE: Consolidated Audit Trail Data Security

June 1, 2020

CITADEL | Securities

June 1, 2020

Mr. Brett Redfearn
Director, Division of Trading and Markets
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Consolidated Audit Trail Data Security

Dear Mr. Redfearn,

Citadel Securities greatly appreciates the continued efforts of the Securities and Exchange Commission ("SEC" or "Commission") to ensure that the consolidated audit trail ("CAT") is effectively implemented. We fully support the need for a robust CAT as the Commission described when it adopted Rule 613 in 2012, and we support the Commission's renewed focus on ensuring that the data is secure and that access to the data is well governed. We believe that there are a number of open issues that must be addressed before the self-regulatory organizations participating in the CAT ("SROs") are granted broad access to CAT data.

We were therefore pleased when Chairman Clayton stated this past March ("March Statement") that he had asked the staff to prepare recommendations for the Commission regarding improving the data security requirements in the CAT NMS Plan. Many of the points the Chairman raised are similar to our own concerns, as the Chairman specifically noted that he "understand[s] and share[s] the concern regarding the risk and impact of potential data breaches."[1] Indeed, the Chairman has consistently reiterated his focus on data security issues raised by the CAT in a number of different settings and has guided the Commission in taking steps to mitigate those risks, including as they relate to Commission use of CAT data.[2]

In his March Statement, the Chairman included a number of important questions for the staff to consider as it develops its recommendations, including questions focused on bulk

[1] *See* Jay Clayton, Chairman, SEC, "Update on Consolidated Audit Trail; Temporary COVID-19 Staff No-Action Letter; Reducing Cybersecurity Risks" (Mar. 17, 2020) (hereinafter, "March Statement"). As noted in the Chairman's March Statement, we appreciate that the Commission's regulatory agenda for Fall 2019 also includes an item indicating that the Division of Trading and Markets is "considering recommending that the Commission propose amendments to the National Market System Plan Governing the Consolidated Audit Trail regarding data security."

[2] *See, e.g.*, March Statement, *supra* note 1; Jay Clayton, Chairman, SEC, "Statement on Status of the Consolidated Audit Trail" (Sept. 9, 2019); Jay Clayton, Chairman, SEC, Testimony on "Oversight of the U.S. Securities and Exchange Commission" Before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (Dec. 11, 2018) ("As I have stated before, as the SROs continue to make progress in the development, implementation and operation of the CAT, I believe that the Commission, the SROs and the plan processor must continuously evaluate their approach to the collection, retention and protection of PII and other sensitive data. More generally, I have made it clear that the SEC will not retrieve sensitive information from the CAT unless we have a regulatory need for the information and believe appropriate protections to safeguard the information are in place."); Jay Clayton, Chairman, SEC, Testimony on "Oversight of the U.S. Securities and Exchange Commission" Before the Committee on Financial Services, U.S. House of Representatives (June 21, 2018).

downloading, transparency, and security of CAT data more generally.[3] We believe these are precisely the appropriate questions for the staff and the Commission to consider at this time, particularly in light of the changes in cybersecurity generally and in the implementation of the CAT that have taken place, not only since Rule 613 was adopted in 2012, but even since the CAT NMS Plan was approved in 2016. Out of necessity, the CAT NMS Plan was originally approved with a variety of topics of key importance, including many related to data security, only resolved at a high level because the overall approaches to the design, build and operation of the CAT were still unknown. That is no longer the case, and we agree with the Chairman that it is time to address these remaining issues directly.

Based on the questions asked by the Chairman, Citadel Securities is pleased to offer the following recommendations.

- The Commission should more clearly articulate what constitutes permissible and impermissible use of CAT data by the SROs (i.e., what activities qualify as "regulatory" purposes and usage and what activities do not), so that SROs and industry participants who are reporting information for inclusion in the CAT may operate from a clear and common understanding of the limitations on the use of CAT data.

    - Market developments over the eight years since Rule 613 was adopted have led to intense competition among the SROs as well as between the SROs and their members. As such, it is imperative that objective, well-understood and commonly accepted lines demarking the differences between commercial and regulatory use be established.

    - Though SROs presently have access to limited cross-market data through participation in the Intermarket Surveillance Group ("ISG"), this is generally by request on an as-needed basis, which by its nature establishes a series of checks and balances. In contrast, without clear guidelines, the CAT would provide the SROs with unfettered and near-instantaneous access to all trading and quoting data, across all SROs and by all broker-dealers. With such broad and ready access, the need for clear guidance on what constitutes regulatory use and what does not becomes even more critical.

    - Each SRO's access to CAT data derived from the activities of other SROs, or from industry members' activities occurring on other exchanges or off-exchange, should be

[3] Specifically, the Chairman's questions were:

- Are there alternatives to "bulk downloading" data by each SRO that would better secure CAT data?
- What are the risks of proliferation of CAT data across multiple environments?
- Are there additional data security issues regarding the use of CAT data for regulatory purposes that should be addressed?
- How will access to customer and account information be addressed to restrict access to the greatest extent possible while still preserving the ability to achieve regulatory purposes?
- Is oversight of Plan Processor security decisions effective and comprehensive?
- To what extent can there be additional transparency regarding the security of CAT and the use of CAT data without making the CAT system vulnerable to bad actors?
- Are there additional security measures that would enhance the security of CAT data, both within and outside of the CAT system?

March Statement, *supra* note 1.

carefully restricted to only the data needed for an SRO to fulfill its own regulatory obligations, chiefly to surveil its members' activities and to monitor for compliance with exchange rules.

- The Commission should require each SRO to explain whether, and if so why, it intends to bulk download CAT data and access cross-market data to conduct surveillance or for other purposes in furtherance of Rule 613 and the CAT NMS Plan. For those SROs that do, the SEC should require filing and SEC approval of specific related policies and procedures before an SRO is permitted to bulk download CAT data.

    - It is imperative to limit the proliferation of CAT data and we, as well as many in the industry, view bulk downloads as the single most likely potential cause of data breach or loss.

    - Detailed guidance from the SEC on what constitutes regulatory usage would significantly mitigate concerns about the SROs' unfettered access to cross-market data as well as appropriately restrict the circumstances under which an SRO would bulk-download data.

    - By definition, bulk-downloading data from the CAT means the data has left the security, controls, and auditability (as required by Rule 613) of the central repository. SROs that do find the need to bulk-download data should be required to justify their reasons and adhere to heightened security and access standards to mitigate the absence of central repository controls.

- The Commission should require transparency into the mandated policies and procedures that are required by the CAT NMS Plan by requiring that each SRO file, and receive SEC approval of, the policies and procedures relating to accessing and using CAT data prior to making any use of the CAT data other than its own.

    - There is a greater need for transparency into, and oversight of, how the SROs intend to comply with the restrictions related to CAT data, including the two overarching topics above, that are mandated by Rule 613.

    - Rule 613 explicitly requires critical elements of this protective framework to be established through the rulemaking process under the Securities Exchange Act of 1934 ("Exchange Act"). Reinforcing the rationale behind the clear Rule 613 mandate, the needed oversight and transparency can only be accomplished by requiring the SROs to file the related policies and procedures as rule proposals, subject to SEC review, approval, and oversight, before allowing unfettered access to all CAT data by the SROs.

    - After-the-fact examinations by the SEC staff of SRO CAT data usage, while beneficial, are not an acceptable substitute.

- Finally, consistent with the above, we would urge the Commission to consider establishing and allocating responsibility for comprehensive cross-market surveillance of CAT data to a single SRO or exploring alternative ways to reduce having multiple SROs performing comprehensive cross-market surveillance.

Each of these topics is addressed more fully below. The underlying theme animating our concerns relates to the lack of transparency and heightened risks that will result from data proliferation and, in particular, unnecessary data proliferation under the CAT regime – absent refinements of the kind the Chairman is advocating and with which we agree.

We would welcome the opportunity to discuss any of these issues in more depth with you and your staff as you work toward preparing your recommendations for the Commission. We would, however, stress at the outset that the purpose of this letter and our recommendations is not to assert that the SROs cannot eventually have access to the CAT data, but that the SROs must be required to go through certain steps before doing so in keeping with Rule 613 and the CAT NMS Plan, and that such data access and usage should fit within more carefully circumscribed parameters to ensure security and appropriate usage. The SEC itself, if not the broader community of market participants, should have a chance to evaluate the sufficiency of those steps before the SROs access CAT data. We believe that these steps can be accomplished without imposing unwanted delay on the CAT's launch and introducing only minimal delay on the SROs' access to CAT data and with much greater confidence among market participants that the CAT will be managed and used in keeping with Exchange Act and Rule 613 requirements.

I. The Commission needs to further articulate what constitute "regulatory purposes" under Rule 613 and the use of CAT data to provide scope limitations with respect to usage and personnel.

As the questions posed in the March Statement acknowledge, the concept of "regulatory purposes" is integral to the usage of the CAT by the SROs. Consequently, and perhaps most critically, we believe that the Commission needs to address and provide clear limits on the access to and use of CAT data by the SROs, and the SROs, in turn, need to provide transparency into their anticipated use of CAT data for "regulatory purposes" and how they intend to ensure that use is so limited. Non-binding statements by the SROs to date on this topic, coupled with the lack of transparency into the concrete steps the SROs will actually take to ensure the CAT is used only in accordance with Rule 613 and the CAT NMS Plan, perpetuate legitimate concerns on that front.[4]

The Commission has long recognized the conflicts SROs face between regulatory responsibilities and commercial interests, and has previously considered requiring SROs to take steps to mitigate these conflicts. For example, in 2004 the SEC proposed wide-ranging requirements on SROs in an effort to mandate more clearly defined limits around SROs' regulatory and commercial activities, including requiring SROs to establish policies and procedures to maintain a separation between their regulatory functions and their market operations and other commercial interests and requiring that funds received from regulatory fines, fees, and penalties

[4] Rule 613(a)(1)(ii) provides that CAT Data shall be available to regulators "to perform surveillance or analyses, or for other purposes as part of their regulatory and oversight responsibilities." Likewise, the CAT NMS Plan provides in Appendix D that "[t]he Plan Processor must provide Participants' regulatory staff and the SEC with access to all CAT Data for regulatory purposes only. Participants' regulatory staff and the SEC will access CAT Data to perform functions, including economic analyses, market structure analyses, market surveillance, investigations, and examinations." CAT NMS Plan, Appendix D at D-25. This general language has been repeated without further explication in the CAT NMS Plan FAQs (FAQ S9, updated 3/12/20). Collectively, we believe such general statements do not provide sufficient clarification into how the SROs intend to ensure they meet their obligations regarding permissible and impermissible uses of CAT data.

be used for regulatory purposes.[5] Further, the SEC has brought enforcement actions against SROs that fail to fulfill their regulatory responsibilities or place other interests ahead of their regulatory obligations and, as part of those actions, has required SROs to take steps to separate regulatory and commercial functions.[6] These actions provide a helpful, although ultimately incomplete, view of how the Commission views the division of functions within an SRO. If anything, in the years since the Commission proposed requiring the separation of those functions, the conflicts have only grown more pronounced as SROs and other participants have come into more fierce competition with one another, and at times with their members, over products and market share.

In light of such inherent conflicts, particularly those faced by SROs that vie with one another and other market participants to operate a competitive marketplace, we believe that reliance on the SROs to self-determine what constitutes "regulatory usage," particularly in the absence of clear Commission guidance, inadequately protects market participants and others from the potential misuse of CAT data. The Commission must further delineate its views as to permissible and impermissible access to and use of CAT data by SROs in furtherance of their regulatory obligations. The CAT NMS Plan—and, indeed, Rule 613 itself—makes clear that the SROs may only use CAT data for "surveillance and regulatory purposes" and that they will be held to this standard. Consequently, it is essential that the SEC further define the scope and contour to this obligation by establishing ground rules on SRO access to and use of the CAT data and a framework within which the SROs must operate.[7]

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[5] *See* Securities Exchange Act Release No. 50699 (Nov. 8, 2004), 69 Fed. Reg. 71126, 71141 (Dec. 8, 2004) ("There is an inherent tension between an exchange's or association's role as a regulator and as the operator of a market, and between its role as a regulator and as a membership organization. The existence of a shareholder class separate from membership adds yet another constituency with interests potentially in conflict with the regulatory responsibilities of the SRO. In recent years, some exchanges, as well as the NASD, have attempted to address this tension by separating, to varying degrees, their regulatory functions from their market operations."); *see also In the Matter of Chicago Board Options Exchange, Incorporated & C2 Options Exchange, Incorporated*, Securities Exchange Act Release No. 69726 (June 11, 2013) ("[A]n inherent conflict exists within every SRO between the regulation of its members and its business interests, as well as the potential for unfair discrimination among members.") (hereinafter, "*CBOE/C2*"); Securities Exchange Act Release No. 50700 (Nov. 8, 2004), 69 Fed. Reg. 71256, 71259 (Dec. 8, 2004) (Concept Release Concerning Self-Regulation) ("Among the most controversial features of the existing SRO system is the inherent conflict that exists within every SRO between its regulatory functions and its members, market operations, listed issuers, and shareholders.").

[6] *See, e.g.*, *CBOE/C2*, *supra* note 5 (settling a case involving "the failure of a self-regulatory organization to police and control this conflict and prevent the advancement of its business interests, and the interests of its member firms, ahead of its regulatory obligations" and requiring CBOE and C2 to, among other things, "take all necessary steps to ensure that CBOE's/C2's regulatory functions shall be independent from the commercial interests of CBOE/C2 and CBOE's/C2's trading permit holders").

[7] *See* Rule 613(e)(4) (requiring the CAT NMS Plan to "include policies and procedures, including standards, to be used by the plan processor to . . . [e]nsure the security and confidentiality of all information reported to the central repository by requiring that . . . [a]ll plan sponsors and their employees, as well as all employees of the central repository, agree to use appropriate safeguards to ensure the confidentiality of such data *and agree not to use such data for any purpose other than surveillance and regulatory purposes*") (emphasis added); CAT NMS Plan, at Sec. 6.5(g) ("The Participants shall establish, maintain and enforce written policies and procedures reasonably designed to (1) ensure the confidentiality of the CAT Data obtained from the Central Repository; and (2) *limit the use of CAT Data obtained from the Central Repository solely for surveillance and regulatory purposes*.") (emphasis added).

At the time it approved the CAT NMS Plan, the SEC did provide some general examples of regulatory purposes.[8] However, these examples need both greater specificity, including use cases and examples of the types of purposes that would *not* be considered "regulatory,"[9] and should be given more context through overarching guidance. Consequently, as a first step to address this issue, we recommend that the Commission provide further guidance to the SROs to establish general guidelines to ensure CAT data is accessed and used solely for the purposes permitted by and in keeping with procedural obligations set forth in Rule 613, preferably through Commission rulemaking.[10]

We recognize that the SROs have expressed reservations about further defining "regulatory purposes." As recently as last November, for example, in a letter from Michael Simon, the Chair of the CAT NMS Plan Operating Committee, to Chairman Clayton, Mr. Simon stated that "[n]otably, these provisions [in Rule 613 and the CAT NMS Plan] do not expressly define 'surveillance and regulatory purposes.' Efforts by the industry to define these terms could, under the pretext of data protection, limit the ability of the Participants to perform their SRO market oversight responsibilities."[11] Contrary to Mr. Simon's suggestion, and particularly because of such concerns, we are not suggesting that the *industry* define these terms. Rather, we believe the *Commission* should provide additional guidance around the requirements it included as part of Rule 613 and with which the SROs are mandated to comply so that the SROs and industry members whose data will be reported to the CAT may operate from the same clear and common understanding of those activities that are appropriately in scope and those that are not.

II. The SEC should require each SRO to explain whether, and if so why, it intends to bulk download CAT data and access cross-market data to conduct surveillance or for other purposes in furtherance of Rule 613 and the CAT NMS Plan. For those SROs that do, the SEC should require filing and SEC approval of specific related policies and procedures.

As indicated in Chairman Clayton's March Statement, bulk downloading presents numerous issues that need to be specifically addressed owing to the fact that it creates additional risks of data breach and proliferation. Although we recognize that the CAT NMS Plan permits bulk downloading, it does not mandate that SROs do so to fulfill their surveillance obligations. Given the increased risks associated with this practice, the burden should be on the SRO to outline the circumstances and purposes that would make bulk downloading necessary (i.e., under what circumstances the SRO anticipates such a download and how those circumstances will be monitored and controlled) and how it will protect the CAT data it chooses to bulk download.[12]

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[8] *See* discussion at fn. 4 *supra*.

[9] Securities Exchange Act Release No. 79318, at 117 n.586 (Nov. 15, 2016), 81 Fed. Reg. 84696, 84724 n.586 (Nov. 23, 2016) (hereinafter "CAT NMS Plan Approval Order").

[10] *See* discussion at Section V *infra*.

[11] *See* Letter from Michael Simon, Chair, CAT NMS Operating Committee to Jay Clayton, Chairman, SEC, dated Nov. 27, 2019, available at https://catnmsplan.com/sites/default/files/2020-02/Simon-Letter-SIFMA-%28Final%29.pdf (hereinafter "Simon Letter").

[12] In fact, we believe that developments in technology should make the need to bulk download unnecessary. Among other things, the exchanges should explore the ability to run their queries directly from the centralized database.

Although the CAT NMS Plan permits bulk extractions of data, it is important to recognize that the CAT NMS Plan was filed and approved even before the SROs or the SEC knew the ultimate design and functionality of the CAT system and central repository. Although the CAT NMS Plan requires that any SRO that bulk downloads CAT data have policies and procedures "comparable" to the data security policies and procedures applicable to the Central Repository, we do not believe that a policy review by the CAT CISO for comparability is itself sufficient, particularly now that more specific information is known about the CAT and the CAT processor's functional capabilities. Put plainly, now that the roles and responsibilities have been assigned, the SEC can and should be more concrete and prescriptive in establishing regulatory expectations around the need for bulk downloading and how the requirements in Rule 613 regarding the plan processor's oversight responsibilities are being met if CAT data is bulk downloaded.[13] Moreover, even if an individual SRO's security procedures were identical to those imposed on the plan processor, this simply means that a complete bulk extraction of CAT data could then be potentially compromised via two (or more) separate systems.

Apart from the proliferation-based security issues of bulk downloading, there are concerns about SRO access to cross-market data. Absent clearer guidance as to what does and does not meet the requirement that CAT data be used only for "regulatory purposes" and the discipline that comes of having SEC-approved policies and procedures in place for SROs imposing restrictions on cross-market data access and usage, an exchange could potentially use CAT data to examine the trading of a non-member on a competitor exchange for the ostensible reason of conducting "economic analysis," one of the enumerated examples of a "regulatory purpose."[14] Although such data usage seems counterintuitive, we do not see how the present regime with its limited guidelines would forestall it. Thus, as with the other topics discussed above, SRO rules outlining the policies and procedures governing cross-market data access should be filed and would offer a way to address concerns shared by other market participants.

In light of the significant additional risks that bulk downloading and cross-market data access present, further SEC oversight is warranted of the related SRO policies and procedures, and they should be subject to public notice and comment to ensure their sufficiency in advance of any SRO bulk downloading or cross-market CAT data usage. We do not believe that such a requirement would compromise an SRO's ability to exercise its authority under the CAT NMS Plan to bulk download data or conduct cross-market surveillance; rather, it would impose discipline and apply additional transparency and oversight into the process used by the SRO where

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Should that functionality be made available, it becomes difficult to see under what circumstances it would be necessary for a single venue to routinely bulk download market-wide data.

[13] For example, Rule 613(e)(4)(i)(C)(2) and (3) require that the CAT NMS Plan "include policies and procedures, including standards, to be used by the plan processor to . . . [e]nsure the security and confidentiality of all information reported to the central repository by requiring that . . . [t]he plan processor . . . [h]ave a mechanism to confirm the identity of all persons permitted to access the data; and . . . [m]aintain a record of all instances where such persons access the data." Although the CAT NMS Plan includes recitation of the obligation, it lacks detailed policies and procedures, and it is therefore not clear how the plan processor can confirm the identity of persons accessing the data or maintain the required records if CAT data is accessed after having been bulk downloaded by an `individual SRO for further use. To the extent this would be accomplished through reliance on the SRO downloading the data, this furthers the need for transparency into the SRO's policies and procedures and bolsters the need for SEC review and approval prior to such activities taking place.

[14] *See* FN 4 *supra*.

it chooses to do so. We believe the SEC can do so without forestalling innovation and adaptation on the part of the CAT as circumstances evolve.

III. Most importantly, the Commission should require transparency into the mandated policies and procedures that are required by the CAT NMS Plan by requiring that SROs file, and receive SEC approval of, the policies and procedures relating to accessing and using CAT data prior to making any use of the CAT data other than their own.

In adopting Rule 613 and requiring the SROs to adopt a number of related policies and procedures, the Commission clearly chose this mechanism as a way to address certain heightened risks associated with the CAT, primarily data protection. Given their importance, we believe that they warrant the review and approval of the Commission prior to being implemented. These policies and procedures are too critical to wait for the Commission's examination staff to review them only after they are in place and the SROs are accessing and using CAT data.[15]

In addition to the broader public policy purpose, Rule 613 specifically requires that the CAT NMS Plan obligate each plan sponsor to "*adopt and enforce rules* that: (1) Require information barriers between regulatory staff and non-regulatory staff with regard to access and use of data in the central repository; and (2) Permit only persons designated by plan sponsors to have access to the data in the central repository."[16] Consequently, regarding these foundational policies and procedures, the language of Rule 613 itself requires these SRO obligations be met through rule filings. This provision, which was added to Rule 613 by the Commission in response to comments, was, in part, "designed to assure regulators and market participants that only designated persons are allowed access to the consolidated audit trail data, and that the central repository will have a method to track such access."[17] Achieving the goal of providing regulators and market participants with this assurance must be provided with the transparency of the rulemaking process required of "rules." To date, no SRO has filed such rules; therefore the SROs have not yet met their obligation to adopt these policies as rules. This obligation should be fulfilled as quickly as possible by the SEC requiring the SROs, working within the frameworks and guidelines established by the SEC as discussed above, to submit the policies for the SEC's review and approval as Section 19(b) rule filings subject to public notice and comment.

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[15] *See* Securities Exchange Act Release No. 67457, at 230 & n.686 (July 18, 2012), 77 Fed. Reg. 45722, 45782 & n.686 (Aug. 1, 2012) (noting that the SEC has "authority to examine the application of any security and confidentiality provisions in the NMS plan to determine whether they have been applied fairly. In this manner, the Commission will be able to monitor how the plan sponsors have applied any such provisions set out in the NMS plan approved by the Commission, and whether their uses of the consolidated audit trail were consistent with the plan and the Exchange Act.") (hereinafter "Rule 613 Adopting Release").

[16] Rule 613(e)(4)(i)(B) (emphasis added). We note that although Section 6.5(f)(ii) of the CAT NMS Plan, which effectuates this requirement, does not include the word "rule," it does require that the SROs adopt and enforce the procedures. Additionally, Appendix C includes the requirement that it be through the adoption of "rules." *See* CAT NMS Plan, App. C, at C-35 ("Pursuant to SEC Rule 613(e)(4)(i)(B), *Section 6.5(e)(ii)* [sic] *of the CAT NMS Plan requires each Participant to adopt and enforce rules* that require information barriers between its regulatory staff and non-regulatory staff with regard to access to and use of data in the Central Repository, and permit only persons designated by such Participants to have access to and use of the data in the Central Repository.") (emphasis added).

[17] Rule 613 Adopting Release, *supra* note 14, at 229.

Indeed, the Commission required that critical elements of these policies and procedures be adopted as "rules," thus establishing an expectation that these policies and procedures would be approved and in place *prior to* CAT data being accessed and used by an SRO. The Commission rightly recognized that such a process would provide needed transparency and enhance the SEC's oversight prior to SROs being allowed to access and use CAT data (other than their own). This approach also recognizes that different SROs may pursue different ways to satisfy their responsibilities.

As noted above, we believe that the Commission when adopting Rule 613 recognized and relied upon the multiple benefits of proceeding through rule filings submitted under Section 19 of the Exchange Act. First, rule filings by the SROs to adopt their policies and procedures related to their access and use of CAT data and, if applicable, bulk downloading of data, would provide transparency to the industry on how each of the SROs will resolve the conflict between regulatory and commercial use of the data and implement the requirements of Rule 613 and the CAT NMS Plan.[18] Indeed, the Commission required that the CAT NMS Plan itself include a number of "policies and procedures, including standards," to be used to monitor the usage of the CAT.[19] Understandably, the Commission acknowledged that, for purposes of the CAT NMS Plan submitted to the SEC for review, an "outline or overview description of the policies and procedures that would be implemented" would suffice; however, the SEC acknowledged the benefit of exposing these policies and procedures to public notice and comment and Commission review and approval.[20] We believe that the "outline or overview" provided in the CAT NMS Plan on these issues is not sufficiently detailed to address the data security concerns persistently voiced by the industry and the Commission itself since the plan's approval.

As noted, the rule filing process would provide needed guidance into the elements of the SROs policies and procedures for securing CAT data and properly limiting its use to regulatory purposes. Among those elements, the SROs should outline the steps they are taking to ensure that only approved persons access CAT data, that the data is not portable outside the exchanges' systems, that SRO regulatory employees agree to confidentiality and other restrictions both during and after their employment, that data cannot be shared with third parties, and that there are robust surveillance and enforcement mechanisms in support of these policies.

In addition to providing transparency, rule filings would provide the SEC with insight into how the SROs propose to resolve the conflicts discussed above and use the data within SEC-defined boundaries before the data is accessed or downloaded. The rule filing process would also provide the SROs themselves with comfort that their policies and procedures, once approved by the SEC, are consistent with their responsibilities. Moreover, once the policies are approved as

[18] Publishing the policies and procedures for public comment does not present any realistic risk of compromising the security of the data. We are not advocating for filings that create such exposure and we are confident that the policies and procedures could be described in sufficient detail to provide the industry, investors, and the general public with insight into how each SRO intends to use, access, retain, and protect such sensitive data without risk of sensitive data being disclosed. We note that SROs are able to file confidential materials with the Commission, including exhibits to proposed rule changes, and request that they not be made public pursuant to Exchange Act Rule 24b-2. *See* 17 CFR 240.24b-2.

[19] *See* Rule 613(e)(4).

[20] *See* Rule 613 Adopting Release, *supra* note 14, at 230, 322 n.923.

"rules," the SROs are required by the Exchange Act to follow them, so it imposes necessary obligations on the SROs to adhere to the policies as approved by the Commission.[21]

The explicit requirements of Rule 613 notwithstanding, treating these required policies and procedures as "rules" and subjecting them to the rulemaking process is consistent with the Exchange Act, and we believe that Section 19 of the Exchange Act, Rule 19b-4 thereunder, require that certain SRO policies and procedures mandated by Rule 613 and the CAT NMS Plan be filed as proposed rule changes. The CAT is a facility of each SRO,[22] and Section 19(b) of the Exchange Act and Rule 19b-4 thereunder require that the SROs file their rules with the SEC.[23] For these purposes, "rules" include "such of the stated policies, practices, and interpretations of such exchange" that relate to "any material aspect of the operation of the facilities of the [SRO]."[24] Policies and procedures the SEC specifically chose to mandate in Rule 613 and the CAT NMS Plan due to their importance are likely to be material aspects of the operation of the CAT as a facility.

In addition to recommending that these policies and procedures be adopted through the rulemaking process, we further recommend that the Commission require that they be approved by the SEC before SROs are permitted broad access to CAT data or engage in bulk downloads. Although requiring these steps before SROs are permitted to access CAT data beyond that which they have reported may add some modest time before SROs would be able to access the full range of CAT data, the time should be minimized, as Rule 613 and Section 6.5(g) of the CAT NMS Plan already require SROs to have these policies and procedures in place. Consequently, these policies and procedures should have already been drafted by each SRO and reviewed by the Plan Processor through the CISO, so the only additional time required would be that devoted to putting these materials through the rule filing process. Importantly, while the proposed rule changes are pending, the SROs would continue to have access to their own market data and would not be compromised in their ability to surveil activity on their own markets.

IV. The SEC should strongly consider designating one SRO with responsibility for comprehensive cross-market surveillance (in addition to the SEC itself).

Citadel Securities believes that, to complement the SEC's own cross-market surveillance capabilities, the Commission should also strongly consider designating one SRO with responsibility for comprehensive cross-market surveillance. Although the Commission need not take such a step immediately, establishing a single SRO with responsibility for comprehensive cross-market surveillance would alleviate many of the data security concerns related to the CAT and CAT data usage. In particular, this approach would significantly reduce the need for multiple

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[21] *See* Exchange Act § 19(g)(1), 15 U.S.C. § 78s(g)(1) (providing that "[e]very self-regulatory organization shall comply with the provisions of this chapter, the rules and regulations thereunder, and its own rules").

[22] Rule 613 Adopting Release, *supra* note 14, at 201-02. In adopting Rule 613, the Commission noted that "because the central repository will be jointly owned by, and a facility of, each SRO, it will be subject to Commission oversight," *id.* at 201, and the SEC "will have more regulatory authority over the central repository as a facility of each SRO than it would have if the central repository were owned or operated by a non-SRO," *id.* at 202.

[23] *See* Exchange Act § 19(b), 15 U.S.C. § 78s(b); 17 C.F.R. § 240.19b-4.

[24] Exchange Act § 3(a)(27), 15 U.S.C. § 78c(a)(27); 17 C.F.R. § 240.19b-4.

SROs to conduct broader-based data analysis or surveillance. Such analysis or surveillance is just another potential avenue along which SROs might try to compete with and seek to outdo one another, leading to a proliferation of data queries and follow ups under the auspices of "regulatory purposes." By turning to a single, and preferably a not-for-profit, SRO with cross-market surveillance responsibilities, the SEC would mitigate these concerns as well as broader worries about the inherent conflicts that exist between the regulatory function and market operations of for-profit SROs that operate competing marketplaces.

Having a single SRO responsible for comprehensive cross-market surveillance also would likely reduce—or potentially eliminate—the need for multiple other SROs to bulk download significant amounts of data and avoid the possibility of multiple SROs using their own resources to investigate the same conduct.[25] A single cross-market SRO also significantly reduces regulatory duplication, which results in additional, unnecessary costs on market participants and, ultimately, investors.

We recognize that the SROs have stated, as recently as last month in a notice from the ISG concerning the creation of a cross-market regulation working group, that they are committed to avoiding regulatory duplication.[26] Such an initiative will no doubt offer a useful forum for sharing information and collaborating in connection with ongoing surveillance, investigation, and enforcement efforts, and will afford ways to reduce unnecessary duplication in those regulatory efforts consistent with their SRO obligations. Regrettably, significant costs have often already been incurred by the time such duplication is noticed, raised with the SROs, and resolved. Far better, in respect of the CAT, to avoid this from the outset by charging one SRO with the responsibility to conduct comprehensive cross-market surveillance.

The idea of tasking a single SRO to perform comprehensive cross-market surveillance could always be broadened or adjusted in time, whether by establishing a different SRO to perform that task or expanding from one to multiple SROs to perform this if for some reason the efforts of the SEC and the single cross-market CAT SRO are found to leave anything lacking. We do believe, however, that it would be far better to start more manageably and build rather than overbuild from the outset with the resultant security and privacy concerns, costs and other potential problems that would come from having multiple competing SROs performing this function.

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[25] We note that the Commission amended the final CAT NMS Plan to include a requirement that the SROs submit, within twelve months of the effectiveness of the CAT NMS Plan, a one-time written report detailing the SROs' consideration of coordinated surveillance (e.g., entering into 17d-2 agreements or regulatory services agreements). *See* CAT NMS Plan, at Sec. 6.6(a)(iii). We are not aware whether the SROs have provided this report to the SEC and, if they have, there is no indication on the CAT NMS Plan website or the SEC's website of the report being made public to provide transparency into the SROs' plans regarding coordinated surveillance. In fact, in a letter from the Chair of the CAT NMS Plan Operating Committee to Chairman Clayton in November 2019, it was indicated that this question was still the subject of discussion among the SROs and no decision had yet been reached. *See* Simon Letter, *supra* note 11, at 6 ("As SIFMA and the SEC are aware, there are myriad Rule 17d-2 and other agreements and arrangements to promote efficiencies in the SRO regulatory scheme. Although the SROs are still discussing this topic, they have no desire to delay progress on CAT given the strict development and implementation milestones.").

[26] *See* FINRA Information Notice, "Cross-Market Regulation Working Group" (Apr. 8, 2020), available at www.finra.org/sites/default/files/2020-04/Information-Notice-040820.pdf.

Absent the SEC establishing an express mandate for a single entity to perform such a function, we note that the CAT NMS Plan and accompanying approval order already contemplate the potential coordination of surveillance among SROs through the use of regulatory service agreements and agreements adopted pursuant to Rule 17d-2 under the Exchange Act, including through a required written assessment addressing coordinated surveillance.[27] Given where we are now, and having not seen any concrete steps to address these issues, we think that the SEC should take up the language from the CAT NMS Plan and set a more explicit set of expectations.

Moreover, nothing about the designation of a single SRO to perform comprehensive cross-market surveillance would restrict or absolve each SRO from focusing attention on the surveillance of its own market. Indeed, by reducing an SRO's cross-market surveillance obligations, the change we describe would free up more capacity for each SRO to focus its efforts on its own marketplace(s) – thereby enhancing the ability of the SRO charged with comprehensive cross-market surveillance to complement and add value to those individual market surveillance efforts.

V. We believe certain of the goals described above may be best accomplished through amending Rule 613 rather than through an amendment to the CAT NMS Plan.

Given the foregoing, we believe that the most effective way to meet certain of the goals discussed would be through amending Rule 613. Rule 613 already includes certain explicit rule filing requirements, and, as noted above, it requires the SROs to adopt and enforce "rules" related to information barriers between regulatory and non-regulatory staff with regard to access and use of CAT data and limitations of access to such data to SRO-designated persons. Similarly, it follows that establishing the boundaries of "regulatory usage" and limitations and additional protections related to bulk downloading, and the framework within which related SRO policies must conform, are best addressed as an SEC rule than an amendment to the CAT NMS Plan.

Under current SEC action, June 22, 2020 is the first date by which industry members are required to begin reporting certain equity data to the CAT; therefore, the CAT is likely to begin receiving some industry information before any such amendments can be accomplished. Consequently, we would recommend that the SEC exempt SROs with market centers from the surveillance requirements (beyond those on their own markets) while the rule filings are pending. If the Commission concludes that it would be preferable not to go down the path of amending Rule 613, we believe the SEC should nevertheless take the position that the policies and procedures described above are "rules" under the Exchange Act and require that the SROs file their policies and procedures related to CAT-related data management issues. The SEC could establish this expectation in a number of ways, including under general interpretation of what Section 19(b) and Rule 19b-4 require.

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[27] *See* CAT NMS Plan, at Secs. 6.1(d), 6.6(a)(iii), 6.10(b); CAT NMS Plan Approval Order, *supra* note 9, at 166 ("The Commission also agrees with the commenters and Participants that a coordinated approach to self-regulatory oversight may have benefits, such as regulatory efficiencies and consistency, but believes that it is reasonable for such an arrangement to be considered by the Participants after the CAT NMS Plan's approval rather than mandating a specific approach for SRO coordination under the Plan at this time—as the Plan Processor has not been selected nor has the CAT System been developed.").

Citadel Securities commends the Commission and its staff for their ongoing efforts to ensure that the material intellectual property and data security issues raised by the CAT project are carefully and thoughtfully considered, and we hope that our recommendations can help advance that process. Please do not hesitate to contact us if we can be of help as you continue to consider the recommendations requested by Chairman Clayton.

Respectfully,

/s/ Stephen John Berger

Managing Director

Global Head of Government & Regulatory Policy

cc: Manisha Kimmel, Senior Policy Advisor for Regulatory Reporting