



**Thomas Tesauro**  
President  
Fidelity Capital Markets  
National Financial Services LLC

November 30, 2020

*Submitted electronically*

Ms. Vanessa Countryman  
Secretary  
U.S. 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,

Fidelity Investments (“Fidelity”)<sup>1</sup> appreciates the opportunity to provide comments on the Securities and Exchange Commission’s (“SEC” or “Commission”) proposed amendments to the national market system plan governing the consolidated audit trail (“CAT”). The proposed amendments are designed to enhance data security related to the ongoing development and operations of the CAT.<sup>2</sup> Fidelity has a significant interest in CAT data-security standards, for our own data and the data of our retail and institutional customers.

Fidelity strongly supports the SEC’s efforts to ensure that CAT Data is secure and

---

<sup>1</sup> Fidelity and its affiliates are leading providers of mutual fund management and distribution, securities brokerage, and retirement recordkeeping services, among other businesses. Fidelity submits this letter on behalf of National Financial Services LLC (“NFS”), a Fidelity Investments company, a SEC registered broker-dealer clearing firm and FINRA member; Fidelity Brokerage Services LLC (“FBS”), a SEC registered introducing broker-dealer, FINRA member, and affiliate of NFS; and Fidelity Management & Research Company (“FMR”), the investment adviser to the Fidelity family of mutual funds. NFS is a CAT Reporter on behalf of itself and one hundred and forty-six (146) correspondent broker-dealers that clear and custody through NFS. NFS is a former member of the CAT Development Advisory Group, which provided suggestions to the Plan Participants in the development of the Proposed CAT NMS Plan. FMR has served as an institutional investor representative to the CAT NMS Plan Advisory Committee and NFS, through Matthew Price, currently serves as a broker-dealer representative to the CAT NMS Plan Advisory Committee. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association (“SIFMA”) and the Financial Information Forum (“FIF”) in their comment letters to the SEC on the Proposed Amendments. We submit this letter to supplement the SIFMA and FIF letters on specific issues.

<sup>2</sup> See Securities and Exchange Commission *Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security*, Securities Exchange Act Release No. 89632, 85 FR 65990 (October 16, 2020) (the “Proposal” or the “Proposed Amendments”). Capitalized terms have the meaning ascribed to them in the Proposal.

safeguarded. While the Proposal seeks to create a more secure CAT, we believe that the SEC can take further action to protect CAT Data. Our recommendations below are designed to highlight such additional protective measures for SEC consideration.

## EXECUTIVE SUMMARY

- The SEC should eliminate Plan Participants' access to CAT cross-market data because it is unnecessary, creates potential conflicts of interest, and broadens the data security vulnerabilities of the CAT;
- The SEC should eliminate the ability for Plan Participants to extract data from a Secure Analytical Workspace environment. If extractions are permitted, they should be allowed only on an exception basis and for a highly circumscribed purpose subject to SEC oversight;
- The CAT Security Working Group should include Industry Members;
- The SEC should provide greater clarity around certain terms used in the definitions of Customer Attributes and Account Attributes – *i.e.*, account type and customer type – and the transformation process for Social Security and tax identification numbers; and
- The SEC should require a public notice and comment period for Plan Participant data confidentiality policies and procedures.

Each of these recommendations is discussed in further detail below.

### Cross Market Surveillance

As self-regulatory organizations (“SROs”), FINRA and the national securities exchanges are required to examine their members and to enforce their member’s compliance with the Securities Exchange Act of 1934 (“Exchange Act”), its rules and regulations, as well as the rules and regulations of the individual SRO. Through various contractual agreements and Exchange Act 17(d) arrangements, broker-dealers are typically examined exclusively by FINRA, who conducts examination, investigation, and enforcement activities on behalf of other SROs. FINRA also conducts cross-market surveillance using trading data it receives from each exchange. If FINRA sees broker-dealer misconduct impacting multiple exchanges, it can consolidate that activity into a single inquiry or examination of the broker-dealer. This coordinated and centralized examination and enforcement model has worked well for the securities industry because it prevents duplicative and overlapping examinations which are unnecessarily time consuming and can lead to conflicting interpretations and different results.

When CAT is fully implemented, the exchanges will be able to directly access cross-market trading data for purposes of surveillance and regulatory-related analysis. Given FINRA’s current role in cross-market surveillance, this broader regulatory access is not necessary, particularly when it has the potential to result in the duplication of broker-dealer regulation and enforcement. While we understand that the exchanges and FINRA have pledged to work

together in a Cross Market Regulation Working Group, the working group is formed on a voluntary basis and has not yet provided a clear statement regarding how they will coordinate regulatory efforts.<sup>3</sup> For this reason, we urge the SEC to clearly state that the SROs must coordinate cross-market surveillance activities and to designate FINRA for this role.

We support FINRA continuing its current centralized and coordinating regulatory function for cross-market surveillance. As compared to the exchanges, we believe that FINRA is better positioned to conduct cross-market surveillance activities, because unlike the national securities exchanges who hold dual commercial and SRO roles, FINRA's only role is as an SRO. While the Proposal provides certain limitations on an exchange's use of CAT Data, Fidelity believes that a potential conflict of interest remains and can be easily eliminated by designating FINRA as the only SRO with access to view cross-market activity. Moreover, the ability of exchanges to access cross-market trading activity is a data touchpoint that broadens the attack surface of the CAT, making CAT data less secure. As a basic matter of data governance, the more exchanges that have access to CAT Data, including cross-market data, and the ability to download such data, the less control the Plan Processor will have over the data and the more difficult it becomes to protect and safeguard it.

Our recommendation to limit CAT cross-market trading data access to FINRA will enhance regulatory coordination, reduce conflicts of interest, and better protect CAT Data. Nevertheless, if the SEC determines to proceed with the Proposal in its current form, we offer the following additional comments.

To the extent the SEC believes that the national securities exchanges require access to cross-market data in the CAT, the SEC should clearly explain its reasoning, delineate the specific instances in which such access is necessary, and provide guidance to the exchanges and FINRA regarding cross-market examination and enforcement. The SEC should also closely monitor an exchange's access to cross-market data and any subsequent use of such data by an exchange to ensure that such data is used in an appropriate and legal manner. Such monitoring should include ongoing reporting regarding the exception(s) granted to the relevant exchange whose data is being shared with another exchange, the basis for granting the exception, any limitations or conditions imposed on the exchange with respect to such exception, and any infringement by the exchange of such limitations or conditions. The Commission should also publicly post in the Federal Register its policies and procedures regarding such exceptions and provide the public with the opportunity to comment on them.

#### Secure Analytic Workspaces

In the Proposal, the SEC requires the creation of a Secured Analytical Workspace ("SAW") that Participants would be required to use in order to access and analyze CAT Data. Under the Proposal, a Participant is able to extract CAT Data within a SAW, but may only do so if the data is the "minimum amount of CAT Data necessary to achieve a specific surveillance or

---

<sup>3</sup> See FINRA Information Notice— 4/8/20 *Members of the U.S. Subgroup of the Intermarket Surveillance Group (ISG) Announce the Establishment of the Cross-Market Regulation Working Group* available at: <https://www.finra.org/rules-guidance/notices/information-notice-040820>

regulatory purpose.”<sup>4</sup> Further, while the Proposal requires customer or account data to be viewed only within a SAW environment, the Proposal provides for an exception process that would allow a Participant to use a non-SAW environment to review transaction data. In particular, the Proposal permits SROs to conduct surveillance queries of CAT Data in a non-SAW environment provided the non-SAW environment is subject to security controls that are consistent with those of the SAW.

Fidelity supports SEC requirements for the creation of a SAW but asserts that SROs should not be permitted to extract data from a SAW; SROs should be required to conduct their surveillance activities only *within* a SAW. In addition, and as discussed above, the exchanges should have access only to their own trading data and any exceptions to this requirement should be highly circumscribed and closely monitored. If exchanges can access and/or extract data from the SAW on an exception basis, the data should be limited to data activity on the facilities of that exchange. Furthermore, the SEC should have oversight responsibilities with respect to any such exception including an SRO’s adherence to any limitation or condition associated with such exception. Similar to our discussion regarding cross-market surveillance, we believe that any such oversight should include ongoing reporting to the public, or at the very least Industry Members, regarding the exceptions granted, the basis for granting the exception, any limitations or conditions imposed on the SRO with respect to such exception, and any infringement by the SRO of such limitations or conditions. In addition, the Commission should make its policies and procedures regarding such exceptions publicly available and subject to comment by the public.

#### Security Working Group

The Proposal requires the establishment of a Security Working Group to advise FINRA CAT on data security matters. The Security Working Group will provide guidance to FINRA CAT on a number of topics including the development and implementation of confidentiality policies and procedures, the review of third party risk assessments (and any corrective action required by such assessments), emerging cyber security issues, information technology issues regarding the development of the CAT System and the development, maintenance and application of the Comprehensive Information Security Program. The members of this group will largely consist of representatives from the various SROs and, as currently proposed, will not include any representation from Industry Members. Fidelity has long supported the meaningful representation of non-SRO market participants in key Regulation NMS committees. These committees and working groups make policy decisions that impact the entire securities industry and non-SRO market participants should be represented on them.

While we support the establishment of the Security Working Group as a further means to safeguard CAT Data, we believe Industry Members should also be represented in this group. Industry Members can provide valuable insight to the Security Working Group based on their company’s own experiences in protecting client data. Meetings of the Security Working Group would also provide an important opportunity for Industry Members to learn about various issues and challenges related to the security of CAT Data that are relevant to Industry Members as well

---

<sup>4</sup> *Id.*

as provide a forum for Industry Members and SROs to discuss such issues and challenges.

### The PII Exemption

The Proposal eliminates a requirement for Industry Members to provide Social Security and tax identification numbers and account numbers for natural person customers, and instead only requires Industry Members to submit the year of birth for any natural person customer as opposed to the full the date of birth. These changes were originally provided as a part of an exemption order granted by the Commission in March of this year and, to help memorialize these changes and promote certainty, the SEC has chosen to eliminate these requirements in the Proposal.<sup>5</sup>

Fidelity supports the SEC's actions to eliminate PII requirements. We agree that the proposed changes are critical to protecting and securing a customer's personally identifiable information.

In addition to these changes, the SEC also proposes to replace the data fields "Customer Identifying Information" and "Customer Account Information" with "Customer Attributes" and "Account Attributes," respectively. "Customer Attributes" includes all of the same data elements as "Customer Identifying Information" except the requirement to report the social security and tax identification numbers and data of birth. "Account Attributes," on the other hand, "include, but [are] not limited to, *account type*, *customer type* [emphasis added], date account opened, and large trader identifier (if applicable)."

Unfortunately, "customer type" and "account type" are not defined in the Proposal and could be considered a new data element that is not recorded today by Industry Members. New fields such as "customer type" and "account type" potentially impose new recordkeeping requirements on Industry Members, in conflict with the stated intent of Rule 613 to not alter data that an Industry Member is already required to collect and maintain.<sup>6</sup> The SEC should consider further clarifying the definitions of these terms to avoid this result.

Fidelity also believes that the SEC should provide clarity regarding the transformation process for Social Security and tax identification numbers ("Transformed Value"). In particular, we would like to better understand how FINRA CAT intends to use the Transformed Value field. Our interpretation of SEC guidance thus far is that each Reporting Member will have a unique algorithm to create the Transformed Value. As a result, no two Reporting Members will submit the same Transformed Value for the same data element (*e.g.*, social security number). If each Reporting Member submits a different Transformed Value, it is unclear how FINRA CAT intends to use the Transformed Value. As previously noted by FINRA CAT, it intends to perform a comparison process to, among other things, identify and analyze a customer's activities across Reporting Members. FINRA CAT should provide additional guidance as to how

---

<sup>5</sup> See Securities Exchange Act Release No. 88393, 85 FR 16152, (March 20, 2020).

<sup>6</sup> See Securities Exchange Act Release No. 67457, 77 FR 45722 (Aug. 1, 2012) [the Commission stating in footnote 383 that "Rule 613 is not intended to alter in any way the information that a broker-dealer is currently required to obtain under Rule 17a-3(a)(9)."].

this process works and how the Transformed Values are used and stored. Conversely, if FINRA CAT does not intend to use the Transformed Value in this process, then we would like to better understand why Reporting Members are required to submit this information.

Data Confidentiality Policies and Procedures

The Proposal requires Plan Participants to adopt and maintain identical written data confidentiality policies. Participants would be required to publish these policies on a public website and engage an independent auditor to review compliance with these policies on an annual basis. The Proposal limits the ability of a Plan Participant’s non-regulatory staff to view CAT Data and limits Plan Participant use of CAT Data for commercial purposes.

Fidelity strongly supports the Proposal’s data confidentiality policy and procedure requirements. We support the proposed limitation on the ability of non-regulatory staff to view CAT Data and limits on the use of CAT Data in connection with a SRO’s commercial endeavors. We further recommend that the SEC require Plan Participants to subject their proposed data confidentiality policies to a public notice and comment period. This additional requirement would provide Industry Members, and the public, an opportunity to provide valuable insight on these policies.

While we support the publication and comment period associated with the data confidentiality policies and procedures, we also recognize the potential negative consequences of sharing too much information. To address this concern, the level of detail required in the policies and procedures should be carefully balanced against the possibility of publishing too much information to the detriment of CAT Data security.

#####

Fidelity would be pleased to provide further information and participate in any direct outreach efforts the Commission undertakes regarding the CAT.

Sincerely,



Thomas Tesauro

cc: The Honorable Jay Clayton, Chairman  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Allison Herren Lee, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner

Mr. Brett Redfearn, Director, Division of Trading and Markets