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August 9, 2010

**Via Email:** *rule-comments@sec.gov*

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**Re: File No. S7-11-10  
Consolidated Audit Trail**

Dear Ms. Murphy:

Wells Fargo Advisors (“WFA”) appreciates this opportunity to comment briefly on the Securities and Exchange Commission’s (“SEC” or “the Commission”) proposed rule making that would require self-regulatory organizations (“SROs”) to establish a consolidated audit trail system (or “CAT.”) Acknowledging that today there is no single database of readily accessible market data, WFA is generally supportive of the concept of granting regulators more efficient access to data concerning orders and executions. This letter outlines some concerns WFA has with this far reaching proposal.

WFA consists of brokerage operations that administer almost \$1 trillion in client assets. It accomplishes this task through 15,100 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states.<sup>1</sup> WFA executes thousands of trades daily through a number of different markets and market participants.

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<sup>1</sup> WFA includes a number of brokerage operations that have combined as the result of the 2008 purchase of Wachovia Corporation by Wells Fargo & Company. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

### **Using the Existing OATS System Will Save Costs**

Where there is a recognized need for increased trade information, it might be worthwhile to determine if an expansion of existing technology could both accelerate the transition to a CAT and reduce potential “construction” costs. FINRA’s Order Audit Trail System (“OATS”) commenced in 1997 with the goal of creating a centralized system into which brokers would report details about the orders they receive in certain securities. Over the past few years, FINRA has worked to refine and enhance the system. While not perfect, and currently not fully capable of providing all of the information asked for in the current rule proposal, it is likely OATS provides a perfect vehicle on which to begin the ambitious undertaking to create a consolidated audit trail. One key feature that has plagued OATS and must be addressed in a CAT is a means of avoiding duplication of information that is reported by an introducing firm and its clearing firm. Even this issue, however, benefits from starting from the basic framework of the current OATS platform and creating a solution. Other SROs might suggest that their system is better or preferable, but OATS probably has a current reach and breadth throughout the industry that would probably dictate that starting with it as the base for the CAT is most cost effective and will reduce the learning curve for the majority of market participants. A revolutionary CAT would require massive industry costs for retraining, whereas starting from a familiar audit trail interface will actually lead to a fully functioning system sooner.

### **Time Needed for Full Implementation**

Using OATS as a foundation on which to build a CAT likely saves time and money. If the decision is not to start with an already existing platform, the proposed time for implementation of this proposal is too short, and the Commission should double it at a minimum. If passed, the rule would mandate that all SROs and their members would have an obligation to furnish on a real time basis at least 14 distinct material terms of an order. In addition, the proposed system would require the creation of industry-wide unique identifiers for the order, the customer, the particular branch office and registered person of the firm involved in the order and the actual trading desk in the firm that handled the order. There is a requirement that all SROs and their members synchronize their clocks. Such requirements represent a revolutionary change in the securities trading landscape, and as represented by the SEC’s own, perhaps low, cost estimate, would consist of a monumental technology “construction” project. The rule anticipates that SROs will file a “plan” and propose rule changes within 4 months of the rule’s passage. The SEC will then have up until 4 months to approve or disapprove the plan. One year after the SEC’s declared effectiveness of the plan, the SROs must start providing data to the central repository. Within an additional year after that date, SROs must develop real-time surveillance of this central repository data and its broker-dealer members must start submitting the trade and other data to the central repository. This 32-month period is woefully short for the total revamp of the securities marketplace. Rushing through such a dramatic change in the trading systems actually poses a great risk of harm resulting from

an inadequate period of time for a thorough vetting of ideas and models, and then “stress-testing” of the suggested program. Unless there is an effort to build on now existing systems to create the consolidated audit trail, it appears likely that a five-year period from concept to full implementation seems more appropriate.

### **“Real Time” Data is Ambitious and Unnecessary**

One of the key features of the proposed consolidated audit trail is its requirement that the system captures and reports the vast quantity of trade data in real time. This requirement alone probably forms a significant portion of the costs of creating the CAT, and it likely would not be money well-spent. A key goal of the consolidated audit trail is to aid regulators in detecting fraudulent and manipulative activity and giving them a means of reconstructing important market events. Real-time transmission of information actually inhibits attaining this noble goal since *accurate* market information often does not happen in real time. Trading information changes rapidly, and it truly only “settles down” in a period after the real time execution. Considerable reconciliation of trades goes on for an interval well after execution. Much like the “black-box” in transportation accident investigations, accurate market or trading incident data has its highest and best use after the transactions as investigators and others reconstruct the factors contributing to the trading incident. Getting that accurate information as close in time to the actual events is a laudable objective, but for the vast array of information the SEC seeks in a CAT, the tremendous cost of an incremental move to real time data simply is not justified by the benefits. Creating a system that ensures that key information is completely available in a “digestible” format reasonably soon after the trading incidents must be the Commission’s realistic aim in this rulemaking.

### **Unique Identifier Challenges**

Another important component of the SEC’s CAT proposal is the use of unique identifiers for many aspects of the securities trading process. It is likely that this proposal needs modification to have a successful and cost efficient implementation. The requirement for a unique identifier for individual customers needs to be an identifier that for most purposes remains “visible” in the CAT only to the SROs and other regulators after the order entry at the originating brokerage firm. There is a legitimate privacy concern in having the unique identifier available to the marketplace, and creating a means to protect that privacy probably would add tremendous incremental cost to the CAT. While the full panoply of privacy concerns that flow from having a unique order identifier being available to every participant in the order execution process may be difficult to assess, creating a system that has that unique identifier available for primarily the post trade review likely solves both the privacy and cost issues in a manner reasonable for both clients, market participants and regulators.

### **A Mechanism to Pay Implementation Costs over Time**

Abundantly clear from the scope and massive breadth of the CAT is that the cost of implementation and ongoing maintenance will impose an enormous financial burden on SROs and the industry. With the SEC's own estimate of almost \$4 billion in implementation costs, the CAT is the securities industry equivalent of the interstate highway project. It seems that it would be a serious impediment for a large number of market participants to absorb all of these costs at one time. Given the critical role the SEC believes CAT will play in carrying out its important mandate of surveilling and managing markets, it would seem essential that the SEC give important consideration to alternative means to help fund the creation of what is essentially a public utility in CAT. Whether by rule or through seeking legislative changes, perhaps the SEC should itself pay user fees to help build and run the CAT. Another possibility could be a system of low-cost loans that legislation allows the government to underwrite to aid some market participants in paying the costs to prepare for the launch of the consolidated audit trail.

Thank you for providing WFA the opportunity to comment. We believe that once the SEC modifies some of the provisions in this Consolidated Audit Trail proposal, investors, the industry and regulators will all benefit from a system that efficiently expands the surveillance capacity of the regulators while not unduly burdening the securities markets. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long  
Director, Regulatory Affairs