



Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

October 28, 2019

Re: Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail (Release No. 34-86901; File No. S7-13-19)

Dear Ms. Countryman:

The American Securities Association (ASA)¹ is pleased to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) regarding its proposal (“Proposal”) to establish transparency and implementation requirements for the Consolidated Audit Trail (“CAT”). The Proposal would set a series of deadlines and expectations for the self-regulatory organizations (SROs) responsible for CAT implementation after years of delays in getting the CAT up and running.

As the ASA has previously stated, we support the adoption of a market-wide surveillance system that allows the SEC to properly oversee markets, take action against wrongdoers, and protect investors. At the same time, we believe these goals can be accomplished without collecting any of the sensitive personally identifiable information (PII) of every American retail investor. The collection of this information will do nothing to support the mission of the CAT and will only subject the PII of millions of Americans to theft from cybercriminals. The CAT database will also become a prime target for state-sponsored Chinese hackers, who have already demonstrated an ability to infiltrate ostensibly ‘secure’ government databases.²

We welcomed Chairman Clayton’s statement accompanying the Proposal in which he stated that “...the regulatory objectives of the CAT can still be achieved without [the] most sensitive pieces of investor information.”³ Chairman Clayton also emphasized the need for the CAT to maintain

¹ The ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. The ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This advances financial independence, stimulates job creation, and increases prosperity. The ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.

² A recent U.S. Intelligence Community “Worldwide Threat Assessment” report warned that “[o]ur adversaries and strategic competitors will increasingly use cyber capabilities – including cyber espionage, attack and influence – to seek political, economic, and military advantage over the United States.” The report concludes that adversaries, including China, will “increasingly use cyber operations to threaten both minds and machines in an expanding number of ways—to steal information, to influence our citizens, or to disrupt critical infrastructure. Report available at <https://www.intelligence.senate.gov/sites/default/files/documents/os-dcoats-012919.pdf>

³ Chairman Jay Clayton – Statement on Status of Consolidated Audit Trail (September 9, 2019).

robust cybersecurity protections, regardless of the level of PII collected. However, there is no compelling reason for the collection of *any* PII under the CAT, and we believe that as the SEC considers the Proposal and next steps for the project, it should unequivocally prohibit the mass collection of PII.

The ASA is also deeply concerned over language included in the CAT Reporter Agreement⁴ that seems to absolve CAT plan participants from any liability related to the breach or misuse of information that brokers will send to the CAT.⁵ Given all the public assurances regarding the security of PII under CAT, it begs the question: Why would the CAT plan participants need to disclaim responsibility over a potential hack of the system if proper safeguards are going to be put in place to protect it? Investors want to know who is ultimately accountable when (not if) their personal information is stolen from the target rich CAT database. Shockingly, the Reporter Agreement and other documents related to operation of the CAT fail to answer this simple question.

Concerns Over the CAT and PII Collection

Over the last several months, Congress has increasingly expressed its concern over the current state of the CAT and in particular the possibility that the PII of millions of retail investors will be collected. Six U.S. Senators – led by Sen. John Kennedy – wrote to the SEC in July 2019 regarding the likelihood that PII under the CAT will become a top target for Chinese hackers.⁶ An April 2019 letter from members of the House Financial Services Committee similarly urging the SEC to prohibit collection of PII.

On October 22, 2019, the Senate Banking Committee held a hearing on the implementation of the CAT in which members of the Committee raised the PII issue.⁷ During that hearing, the Chief Operating Officer of FINRA CAT LLC – which will be the plan processor for the CAT – acknowledged that 3,000 individuals will have access the information collected under CAT. Absent any further restrictions on PII collection, that is 3,000 individuals that will be able to access the sensitive personal information of every single investor in America that happens to make a trade in the equity markets. If it wasn't clear before the hearing, it is crystal clear now that the potential for theft and misuse of individuals' information under the CAT is astronomical. Just ask Capital One who trusted Amazon Web Services, the same company the CAT will use, to protect and store the personal information of millions of its retail customers.⁸

⁴ [https://www.catnmsplan.com/wp-content/uploads/2019/09/Consolidated-Audit-Trail-Reporter-Agreement\(08-29-19%20FINAL\).pdf](https://www.catnmsplan.com/wp-content/uploads/2019/09/Consolidated-Audit-Trail-Reporter-Agreement(08-29-19%20FINAL).pdf)

⁵ Section 2.9 of the CAT Reporter Agreement: “Services to be provided by CATLLC to CAT Reporter under this Agreement may be performed by the Plan Processor or any other subcontractor of CATLLC or the Plan Processor. In furtherance of the performance of such services, the Plan Processor or such other subcontractor may require access to CAT Reporter’s information or data. CAT Reporter hereby authorizes CATLLC to release CAT Reporter’s information or data to the Plan Processor or any such other subcontractor in furtherance of the performance of services under this Agreement *and agrees that CATLLC shall have no liability arising from such release or use of CAT Reporter’s information or data.*” (emphasis added)

⁶ <https://www.kennedy.senate.gov/public/press-releases?ID=3F13AE89-5988-4E8D-9D49-DF994B646983>

⁷ Oversight of the Status of the Consolidated Audit Trail (October 22, 2019).

⁸ <https://marketrealist.com/2019/08/why-the-capital-one-hack-is-becoming-amazons-headache/>

Furthermore, to the best of our knowledge, there are no post-employment restrictions in place for any of these individuals with access to PII. Can someone with access to the CAT leave and go work for a Wall Street hedge fund, taking with them information they obtained from their previous role? On this point, we note the difference between provisions governing the CAT and those governing employees of the Office of Financial Research (OFR), an agency created by the 2010 Dodd-Frank Act and charged with collecting a significant amount of market sensitive information. The statute creating OFR specifically prohibited employees that had access to OFR data from “being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information.”⁹ Will all 3,000 individuals with access to the CAT be subject to the same type of prohibition?

Commissioner Peirce also raised several important points regarding SEC enforcement and the CAT in a recent op-ed.¹⁰ As the ASA pointed out in a previous comment letter¹¹, the SEC’s own enforcement statistics demonstrate that the Commission has had few problems bringing cases involving insider trading and market manipulation over the past decade. We agree with Commissioner Peirce’s assertion that “...the [SEC’s] enforcement division already is very successful at locating and bringing to justice wrongdoers in our markets and...the SEC already has sufficient tools to get the information it needs to pursue credible leads about market misconduct.” Once again, the costs associated with collecting PII vastly outweigh any benefit to investors or the SEC’s ability to oversee markets.

Main Street Investors Do Not Want Their PII Sent to a Vast Database

A morning consult survey released earlier this year and commissioned by the ASA reveals just how strongly American investors oppose sending their personal information to the CAT.¹² While three in four investors trust their broker to keep their personal and financial information secure, nearly four in five would not feel comfortable if their broker were forced to send this information to an unregulated third-party. The survey showed a whopping nine in ten investors are opposed to the government requiring their broker to send investment information to an unregulated third-party. Investors with money in the market participated in the nationwide survey. The SEC does not need PII to conduct market surveillance and police bad actors. We implore the Commission to outright prohibit the collection of PII by the CAT.

Conclusion

⁹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 152

¹⁰ This CAT is a Dangerous Dog. Real Clear Politics (October 9, 2019). Available at https://www.realclearpolicy.com/articles/2019/10/09/this_cat_is_a_dangerous_dog_111285.html

¹¹ ASA Letter to SEC on Collection of Personally Identifiable Information by the Consolidated Audit Trail (February 25, 2019). Available at <http://americansecurities.org/wp-content/uploads/ASA-Letter-to-SEC-on-CAT-and-PII-02-25-19.pdf>

¹² http://americansecurities.org/wp-content/uploads/ASA_CATPollingFINAL.pdf



The ASA appreciates the work of the SEC to bring the CAT online after years of implementation delays. Market participants have already invested billions of dollars to get the CAT up and running, and we are hopeful that this surveillance tool will assist the SEC in fulfilling its mission. But there is no utility – and a tremendous amount of risk – involved with collecting the PII of all of America’s retail investors and storing it in a target rich one-stop-shop database that will be hacked. We implore the SEC to take affirmative action to prohibit the collection of PII under the CAT in order to protect our markets and the millions of Main Street investors that invest their hard-earned savings in them.

Sincerely,

Christopher A. Iacovella
Chief Executive Officer
American Securities Association