

December 16, 2019

The Honorable Jay Clayton
Chairman
U.S. Securities & Exchange Commission
100 F Street, N.W.
Washington, D.C. 20549

Re: Consolidated Audit Trail

Dear Chairman Clayton:



National Political
Advocacy Department
915 15th St. NW, 6th FL
Washington, D.C. 20005
aclu.org

Susan Herman
President

Anthony Romero
Executive Director

Ronald Newman
*National Political
Director*

The American Civil Liberties Union (ACLU) writes regarding the pending implementation of the Consolidated Audit Trail (“CAT”),¹ which will collect and store the personal information of more than 100 million investors.² We are concerned that the CAT will pose significant risks to the privacy of millions of investors and write to urge the Securities Exchange Commission (“SEC”) to take additional steps to protect the privacy and security of the information that the CAT will collect, store, and disclose as CAT implementation continues.

Each national securities exchange, all of their members, and the Financial Industry Regulatory Authority (FINRA) will be required to provide detailed information to the CAT, which will enable regulators to track transaction activity across financial markets and detect illegal practices. Government possession of such a vast, and unprecedented, amount of sensitive personal financial information requires strong data security and privacy protections. Unfortunately, the CAT will fall short of providing the necessary safeguards in four primary ways.

First, the CAT will collect and store far too much personally identifiable information. Under the CAT National Market System Plan (“CAT NMS Plan”), each industry member must report Customer Identifying information to the CAT.³ The information will include the social security numbers, dates of birth, and account numbers for individuals.⁴ That information will then be captured and stored by the CAT, creating significant security and privacy risks for the people affected.⁵ The CAT participants have requested exemptive relief from this requirement.⁶ Under the request, CAT participants would no longer report individuals’ social security numbers, dates of birth, or account number to the CAT and would instead create a

unique identifier, known as the CAT Customer ID. This would represent an important and privacy-protective improvement to the CAT and we urge the SEC to grant the request and to continue to consider further measures to limit the personal information maintained by the CAT.

Second, currently, to access data from the CAT, the SEC and any of the 24 Self-Regulatory Organizations will need only to assert a “surveillance [or] regulatory purpose” for doing so.⁷ This standard is far too broad and vague to assure that the data will only be acquired and used for specific and legitimate enforcement purposes. The SEC should provide a clearly defined standard that must be met in order to access and use information in the CAT and should specifically prohibit those with access from using the information for any commercial purpose.

Third, SROs and exchanges will not only have access to information provided to the CAT by other, competing, exchanges and SROs, they will also be able to download that information in bulk without any limitations on the timeframe for which the data can be retained.⁸ These policies multiply the risks of data breaches and mishandling by greatly increasing the number of entities that can possess data without imposing proper safeguards. The SEC should limit SRO and exchange access to the CAT to only trading activity for their respective exchange(s), and only the SEC and FINRA should access the customer database. The SEC should also ensure that CAT data can only be accessed within the CAT’s secure environment that is managed by FINRA CAT and should provide that the data can never be extracted from that environment.

Fourth, at least 24 SROs and the SEC will have access to the CAT and, according to estimates, that could mean that as many as 3,000 employees of the agencies and SROs could have access “to every trade, from every account, from every broker, for

¹ Securities Exchange Commission, Rule 613 (Consolidated Audit Trail), <https://www.sec.gov/divisions/marketreg/rule613-info.htm>.

² Randy Snook, *Beware of CAT*, SIFMA (Nov. 30, 2017), available at <https://www.sifma.org/resources/news/beware-of-cat/>.

³ See Sections 6.4(d)(ii)(C) and 6.4(d)(iv) of the CAT NMS Plan, available at <https://www.sec.gov/divisions/marketreg/cat-nms-plan-02-27-15.pdf>.

⁴ *Id.* at Section 1.1.

⁵ *Id.* at Section 9.1 of Appendix D.

⁶ Letter from Michael Simon, Chair, CAT NMS Plan Operating committee, to Vanessa Countryman, Secretary, SEC (Oct. 16, 2019).

⁷ 17 C.F.R. 242.613 (e)(4)(i).

⁸ See Sections 6.10(c)(1) of the CAT NMS Plan, available at <https://www.sec.gov/divisions/marketreg/cat-nms-plan-02-27-15.pdf>.

every retail investor in America.”⁹ The SEC should limit the number of users with access to the CAT and require training and other limitations for handling that data.

Creating the largest government database of investor and transaction information raises many difficult and practical questions. The ACLU believes these solutions are necessary, at a minimum, to ensure the protection of the privacy and security of investors’ data in the CAT and urge the SEC to implement these safeguards as the CAT’s implementation continues. We welcome any questions you might have and would be happy to meet with you or your staff to discuss these issues further. Please contact Kate Ruane, kruane@aclu.org, with any questions.

Sincerely,



Ronald Newman
National Political Director



Kate Ruane
Senior Legislative Counsel

CC: Manisha Kimmel, Senior Policy for Regulatory Reporting kimmelm@sec.gov
Brett Redfearn, Director of Trading and Markets, redfearnb@sec.gov

⁹ SIFMA, *Senate Banking Committee Hearing on the CAT* (October 22, 2019) (quoting Sen. Tom Cotton), available at <https://www.sifma.org/resources/general/senate-banking-committee-hearing-on-the-cat/>.