



BETTER MARKETS

January 24, 2020

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: The Consolidated Audit Trail (CAT) and the American Civil Liberties Union
December 16, 2019 Letter (Release No. 34-79318; File No. 4-698).

Dear Chairman Clayton:

We write in response to the American Civil Liberties Union letter addressed to you (“ACLU Letter,” dated December 16, 2019) regarding the Consolidated Audit Trail (“CAT”). As you know, Better Markets¹ has advocated for an effective CAT for many years. We have also raised concerns relating to the deep, crippling and, ultimately, unmanageable conflicts of interest that have plagued the CAT from the beginning and delayed its implementation for many years now.²

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

² See Better Markets Newsletter Discussing the Need for a CAT (August 13, 2014), available at <https://bettermarkets.com/newsroom/financial-reform-newsletter-august-12-2014>; see also, Better Markets Press Release applauding Senator Mark Warner’s efforts on CAT (August 13, 2016), available at <https://bettermarkets.com/newsroom/better-markets-applauds-sen-mark-warner%E2%80%99s-demand-sec-act-long-overdue-consolidated-audit>; see also Better Markets Comment Letter in Response to CAT NMS Plan (July 18, 2015), available at <https://bettermarkets.com/sites/default/files/CL%20-%20SEC%20-%20Consolidated%20Audit%20Trial%207-18-2016.pdf> (“**Better Markets Letter 1**”); see also Better Markets Press Release raising disappointment on the final CAT Plan Approval (November 15, 2016), available at <https://bettermarkets.com/newsroom/cat-plan-fails-protect-investors-rid-market-disruptive-and-manipulative-practices>; see also Better Markets Memo to U.S. Senate Banking Committee Members on the eve of Confirmation Hearing of SEC Commissioners highlighting the need for Senators to ask questions to nominees about the CAT (March 14, 2017), available at <https://bettermarkets.com/newsroom/critical-questions-should-be-asked-senate-banking-committee-confirmation-hearing-sec>; see also Better Markets letter to U.S. Senate Banking Committee calling on oversight of the SEC to implement CAT (April 14, 2017), available at <https://bettermarkets.com/sites/default/files/Senate%20Banking%20Committee%20Economic%20Growth%20Proposals.pdf>; see also Better Markets op-ed in the *American Banker* “Policymakers shouldn’t bail on

Therefore, as you know, we have raised and share many if not all of the ACLU's concerns about CAT NMS's governance and appropriate regulatory access to the CAT. However, although not noted in the ACLU Letter, all of those concerns can be addressed and the American people can finally get the protections from and benefits of the CAT, which are critical and long overdue. As our past rebuttals have detailed, the unending, largely baseless complaints of the industry, their well-financed trade associations, and sundry political and other allies are little more than excuses and pretexts to kill or delay the implementation of CAT.

Thus, we again urge you to move forward expeditiously and require the implementation of the remaining phases of the CAT with the appropriate modifications we have suggested to address the conflicts of interest and other deficiencies in the CAT. Objections, even from non-industry sources that unfortunately and likely unintentionally echo industry talking points, should not be allowed to further delay the CAT, which is so important to protecting our retirees, savers, and integrity of our capital markets.

As you know, the CAT has the potential to be a game-changer for the SEC and revolutionize the Commission's capabilities to protect investors, facilitate capital formation and promote fair and orderly capital markets—on which job creators and savers, and indeed all Americans, depend. When completed, the CAT will serve two critical and long-overdue functions: enable the SEC to reduce, manage, and better understand market disruptions and crashes as well as identify, deter, and punish illegal manipulations and other predatory and trading abuses—all for the benefit investors and our markets.

plan to prevent next “flash crash” (November 8, 2017), *available* at <https://www.americanbanker.com/opinion/policymakers-shouldnt-bail-on-plan-to-prevent-next-flash-crash>; *see* also Better Markets letter to SEC Chairman Jay Clayton applauding his decision to not excuse implementation delay (November 15, 2017), *available* at <https://bettermarkets.com/sites/default/files/Ltr%20SEC%20Chair%20Clayton%20re%20CAT%2011-15-17.pdf> (“**Better Markets Letter 2**”); *see* also Better Markets Blog Post Encouraging the SEC to Stay the Course on CAT and implement it swiftly (January 18, 2018) *available* at <https://bettermarkets.com/spotlight-series-investors-and-markets/sec-should-stay-course-cat>; *see* also Better Markets Blog Post on “Flash Crash Anniversary a Reminder of Why We Need CAT and Why the SEC Should Flex Its Muscle to End Industry Procrastination” (May 4, 2018), *available* at <https://bettermarkets.com/spotlight-series-investors-and-markets/flash-crash-anniversary-reminder-why-we-need-cat-and-why-sec>; *see* also Better Markets Letter to SEC Chairman Clayton calling on the SEC to begin levying fines on the industry consortium for lack of compliance implementing CAT (September 24, 2018), *available* at <https://bettermarkets.com/sites/default/files/BM%20Ltr%20to%20SEC%20Chair%20Clayton%20On%20CAT.pdf> (“**Better Markets Letter 3**”); *see* also Better Markets Letter to the U.S. Senate Banking Committee's 10/22/2019 hearing on "Oversight of the Status of the Consolidated Audit Trail", *available* at https://bettermarkets.com/sites/default/files/Ltr_Senate_Banking_Committee_Hearing_re_CAT_10-19-19_Final_%28002%29.pdf (October 22, 2019); *see* also Better Markets Comment Letter re Proposed Amendments to the NMS Plan Governing the Consolidated Audit Trail (October 28, 2019), *available* at <https://www.sec.gov/comments/s7-13-19/s71319-6355349-196250.pdf> (“**Better Markets Letter 4**”). For a comprehensive list of Better Markets engagement on CAT, please *see* <https://bettermarkets.com/Where-Is-The-CAT>.

Those functions are vital because investor confidence and trust are the foundations upon which our markets are built and grow. Yet, today, ten years after the “Flash Crash,” we remain at grave risk of another one, which will crush confidence of investors and damage our capital formation capability for years to come. Our markets are moving at the 21st Century speed of milliseconds, but our regulators are too often hopelessly stuck with technology better suited to the horse and buggy era of the 19th Century. The CAT could change all that and catapult investor protection into the 21st Century. As you know from prior meetings and communications,³ we have very much appreciated your past leadership regarding the implementation of the CAT. We remain hopeful that CAT will be fully implemented before the completion of your tenure.

To facilitate the expeditious review of the ACLU Letter, we will address four concerns that it raises: (1) CAT’s collection of personally identifiable information (PII); (2) Self-regulatory organizations’ (SROs) access to CAT; (3) SROs ability to download CAT data in bulk, and; (4) the number of user accounts (estimated to be 3,000) that would have access to CAT.

1. CAT’s collection of PII: The ACLU Letter raises privacy concerns about CAT’s collection of PII, particularly, CAT’s collection of social security numbers. We share ACLU’s privacy concerns about social security numbers of Americans. We note, however, that currently all brokers, banks, credit unions, credit card issuers, auto-loan and other credit providers, all other financial professionals, accountants, real estate agents, escrow officials and many other professions (including medical offices) collect social security numbers. Privacy breaches of these entities have occurred at much higher rates than breaches of governmental databases. We further note that one of the critical uses of the CAT system would be to quickly and accurately connect predatory or manipulative trading practices to those engaging in (or benefiting from) such activities, and certain PII is necessary to satisfy that critical use-case. That said, we welcome Commission’s efforts to safeguard PII both through requiring the highest security and encryption standards for CAT data both at rest and in transit, and Commission’s current deliberation to not collect into the CAT system social security numbers but to require brokers to create unique customer IDs and use those customer IDs to report into CAT. We believe these measures will address the privacy concerns and still maintain the critical functionality of the CAT system.
2. SROs’ Access to CAT: We agree with ACLU that profit-seeking SROs should not have unfettered access to CAT. We have expressed our concerns in our previous correspondence⁴ that CAT data will have commercial value to already deeply conflicted SROs (particularly the three conglomerates that own 20 of the 24 registered national exchanges) who can use the data to advance their profit-seeking commercial goals. We have advocated in the past that only the SEC and Financial Industry Regulatory Authority (FINRA) should have permanent access to CAT, and SROs should be granted temporary—as needed only for regulatory purposes—access to the records emanating from their own members and not market-wide data.

³ See, e.g., Better Markets Letter 2.

⁴ See Better Markets Letter 1 and Better Markets Letter 4.

3. SROs Ability to Download in Bulk: Similar to the above, we do not think it is appropriate for SROs to have the ability to download CAT data in bulk, as we have concerns that that data will be used for commercial purposes.
4. The Number of User Accounts: We share ACLU's concerns about the number of user-accounts. The latest CAT NMS Plan envisions that up to 3,000 user accounts may eventually gain access to CAT. Access to CAT should be limited to those at the SEC and FINRA who monitor and surveil markets and market-participants, to those that study and analyze markets, and to those who enforce the rules and laws that govern the capital markets.

We hope the Commission would address these concerns and move expeditiously to implement and finalize CAT. Investors and the health and integrity of our markets demand that.

Thank you for considering these issues.



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