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# The SEC Must Not Kill The CAT

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## Introduction

On May 6, 2010, nearly \$1 trillion of stock market value was temporarily lost.<sup>1</sup> Some stocks inexplicably plummeted to \$1 per share while others skyrocketed to more than \$100,000 per share.<sup>2</sup> Neither the SEC nor other regulators understood this event, and it took the SEC months to reconstruct what happened, largely because it had neither the tools nor the data to do so.<sup>3</sup>

This event, which became known as the “Flash Crash,” was the impetus for the Consolidated Audit Trail (CAT). The SEC determined that it required a comprehensive audit trail because it needed greater surveillance and supervision over the financial markets.<sup>4</sup> The CAT is a tool that collects and identifies “every order, cancellation, modification, and trade execution for all exchange-listed equities and equity options in the U.S. market.”<sup>5</sup> This database allows the SEC to accurately track orders throughout their lifecycle and identify the broker-dealers handling them, which provides the SEC “with an unprecedented ability to effectively oversee the markets” it regulates.<sup>6</sup> Although this data already existed at broker-dealers and self-regulatory organizations like FINRA, the lack of a single repository prevented the SEC from tracking trades in real time and seeing the market as a whole. The CAT therefore allows the SEC to protect investors from not only events like the Flash Crash but also predatory trading activities and other types of misconduct.<sup>7</sup>

SEC Rule 613, which required the creation of the CAT, became effective 13 years ago today on October 1, 2012.<sup>8</sup> Although it subsequently took much longer than it should have to build the CAT,<sup>9</sup>

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<sup>1</sup> Better Markets, [Where’s the CAT?](https://bettermarkets.org/newsroom/where-is-the-cat/) (Feb. 16, 2021), <https://bettermarkets.org/newsroom/where-is-the-cat/>.

<sup>2</sup> Lev Bagramian, [Flash Crash Anniversary a Reminder of Why We Need CAT and Why the SEC Should Flex Its Muscle to End Industry Procrastination](#), Better Markets (May 4, 2018).

<sup>3</sup> Better Markets, *supra* note 1.

<sup>4</sup> Jessica Erickson, *Automating Securities Class Action Settlements*, 72 Vand. L. Rev. 1817, 1854 (2019).

<sup>5</sup> Edwin Batista, *A Shot in the Dark: An Analysis of the SEC’s Response to the Rise of Dark Pools*, 14 J. High. Tech. L. 83 (2014); see also Erickson, 72 Vand. L. Rev. at 1854 (stating that the CAT “will soon allow regulators to track all securities activity in the U.S. financial markets”).

<sup>6</sup> Chairman Mary L. Schapiro, [Opening Statement at SEC Open Meeting: Consolidated Audit Trail](#) (July 1, 2012).

<sup>7</sup> Better Markets, [The Consolidated Audit Trail is a long overdue transparency and accountability measure to protect investors and the integrity of the U.S. securities markets](#) (Feb. 16, 2021), <https://www.sec.gov/files/rules/final/2012/34-67457.pdf>.

<sup>8</sup> <https://www.sec.gov/files/rules/final/2012/34-67457.pdf>.

<sup>9</sup> Lydia Beyoud, [Wall Street Fights Over Tab for Massive Stock-Trade Database](#), Bloomberg (Sept. 6, 2023).

and it only became fully operational recently, the CAT has already proven its worth. The SEC has identified misconduct that it would not have been able to uncover without the CAT.<sup>10</sup>

Unfortunately, the CAT is now under attack. The industry has long opposed the CAT because it would rather operate in the shadows,<sup>11</sup> and it now has an ally in new SEC Chair Paul Atkins. Yesterday, the SEC issued an order eliminating some of the CAT's requirements and promising more changes.<sup>12</sup> This may just be a precursor to attempts to dismantle the CAT entirely. After all, Chair Atkins helped draft Project 2025, which calls for the CAT's termination.<sup>13</sup>

The SEC must not kill the CAT. Without the CAT, it will be easier for financial firms to break the law and harder for the SEC to oversee the securities markets. This is especially so since FINRA retired its prior order tracking system after determining that the CAT was accurate and reliable.<sup>14</sup> So eliminating the CAT would leave regulators blind. The SEC should side with the investors whom the CAT is designed to protect and not the firms whom the CAT is designed to police.

## The CAT is an Essential Investor Protection Tool

The need for a CAT should be indisputable. Our securities markets are incredibly complex, and the SEC requires a tool that enables it to monitor those complex markets effectively. The SEC oversees 26 national securities exchanges, 109 alternative trading systems, and over 3,300 broker-dealers.<sup>15</sup> Billions of shares trade on these markets every day.<sup>16</sup> Technology allows market participants “to submit many thousands of quotes in less than a second” and allows quotes “to be canceled in milliseconds or even microseconds.”<sup>17</sup> The only way that the SEC can oversee all this trading and identify possible misconduct is through a database like the CAT.

Only through a consolidated audit trail can we truly know what is happening in our marketplace, with trading activity cascading across multiple trading venues and asset classes. The linkages, complexity, and fragmentation of our markets outstrip the current ability to monitor, analyze, and interpret market events. . . . Only through CAT can regulators appropriately survey our high-speed and high-volume marketplace.<sup>18</sup>

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<sup>10</sup> See, e.g., Press Release, *SEC Charges Financial Services Professional and Associate in \$47 Million Front-Running Scheme* (Dec. 14, 2022), <https://www.sec.gov/newsroom/press-releases/2022-228> (“The SEC staff analyzed trading using the Consolidated Audit Trail (CAT) database to uncover Williams’ allegedly fraudulent trading and to identify how he profited by repeatedly front-running large trades by Billimek’s employer.”).  
<sup>11</sup> Chris Dolmetsch, *Wall Street Seizes Opportunity to Gut SEC Trading Surveillance*, Bloomberg (May 2, 2024).  
<sup>12</sup> Paul S. Atkins, Chairman, *Consolidated Audit Trail: A New Day for the CAT* (Sept. 30, 2025).  
<sup>13</sup> Bill Alpert, *The SEC is Considering Blunting Its Trade-Tracking System*, Barron’s (Apr. 11, 2025).  
<sup>14</sup> Regulatory Notice 21-21, *FINRA Eliminates the Order Audit Trail System (OATS) Rules* (June 17, 2021).  
<sup>15</sup> Securities and Exchange Commission, *Annual Performance Report for Fiscal Year 2024*, at 1 <https://www.sec.gov/files/fy-2026-congressional-budget-justification.pdf>.  
<sup>16</sup> Usha R. Rodrigues and Michael Stememoller, *The SPAC Market*, 100 Wash. U. L. Rev. 1759, 1768 (2023).  
<sup>17</sup> Gregg E. Berman, *What Drives the Complexity and Speed of our Markets* (Apr. 15, 2014).  
<sup>18</sup> Commissioner Kara M. Stein, *The Dominance of Data and the Need for New Tools* (Apr. 14, 2015).

The CAT thus “aims to recreate what has been lost through the fragmentation of the stock market and, further, to deepen the granularity of data that the SEC receives.”<sup>19</sup>

The CAT means that “all certified participants in the United States securities marketplace have to submit their detailed, extensive records into a pooled, centralized system.”<sup>20</sup> So the CAT provides the SEC with a “real-time data feed of detailed market activity.”<sup>21</sup> This allows “regulators to track all activity efficiently and accurately throughout U.S. markets.”<sup>22</sup> It gives them a “vast database” that will enable them “to look at who has been trading what in the sub-second trading world that exists today.”<sup>23</sup> Thus, the CAT helps the SEC “detect and respond to problematic conduct.”<sup>24</sup>

The problem of market manipulation—whether through front-running, spoofing, insider trading, or otherwise—threatens to undermine the integrity of the securities markets. As one might expect, the market manipulators who engage in these tactics usually aim to cloak their actions in secrecy. One goal of the SEC’s CAT effort . . . is to bring emerging forms of market manipulation out of the shadows.<sup>25</sup>

This is why James Angel, finance professor at Georgetown University, says that without the CAT there would be “a big hole in our financial regulation.”<sup>26</sup> Angel says that you need the CAT if “you’re trying to catch people doing things like spoofing or manipulation or other sleazy stuff.”<sup>27</sup>

For these reasons, the importance of a CAT that provides the SEC with the information it needs to effectively police the securities markets cannot be overstated. Previously, regulators had

to cobble together disparate data from a variety of existing information systems lacking in completeness, accuracy, accessibility, and/or timeliness—a model that neither supports the efficient aggregation of data from multiple trading venues nor yields the type of complete and accurate market activity data needed for robust market oversight.<sup>28</sup>

As a result, the lack of a comprehensive audit trail was “a significant impediment to proactive policing by the agency” that hindered its regulatory mission.<sup>29</sup> The CAT puts the SEC “in a position

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<sup>19</sup> David A. Wishnick, *Reengineering Financial Market Infrastructure*, 105 Minn. L. Rev. 2379, 2434 (2021).

<sup>20</sup> John C. Coffee, Jr., and Joshua Mitts, *Can Section 11 Be Saved?: “Tracing” a Path to its Survival*, 15 Harv. Bus. L. Rev. 1, 18-19 (2025).

<sup>21</sup> Roberta S. Karmel, *IOSCO’s Response to the Financial Crisis*, 37 J. Corp. L. 849, 900 (2012).

<sup>22</sup> John W. Bagby and Nizan G. Packin, *Regtech and Predictive Lawmaking: Closing the Reglag Between Prospective Regulated Activity and Regulation*, 10 Mich. Bus. & Entrepreneurial L. Rev. 127, 162 (2021).

<sup>23</sup> Bob Pisani, [It’s Google vs. Amazon to create the biggest database in history](#), CNBC (Apr. 27, 2016).

<sup>24</sup> Wishnick, 105 Minn. L. Rev. at 2392.

<sup>25</sup> *Id.*

<sup>26</sup> Jennifer Hughes, [Killing the CAT: why a key regulatory tool is under attack from Wall Street](#), Financial Times (Nov. 15, 2024).

<sup>27</sup> *Id.*

<sup>28</sup> *Consolidated Audit Trail*, Exchange Act Release No. 67457, 2012 WL 2927797, at \*2 (July 18, 2012).

<sup>29</sup> Rachel E. Barkow, *The New Policing of Business Crime*, 37 Seattle U. L. Rev. 435, 453 (2014).

to engage in more proactive oversight.”<sup>30</sup> By allowing the SEC to capture a complete record of all information about an order, “including the identity of customers,” a fully operational CAT facilitates market surveillance for market disruptions, insider trading, and other abuses.<sup>31</sup>

## CAT’s Critics Miss the Mark

The CAT should be “a regulator’s dream.”<sup>32</sup> The problem is that Chair Atkins has no interest in regulating the securities industry. Instead, he has demonstrated that his interest is in furthering the agenda of the industry he is supposed to regulate.<sup>33</sup> That industry has “long expressed skepticism” about the CAT.<sup>34</sup> That makes sense, as the industry would obviously rather that the SEC have less insight into its conduct. What does not make sense is the chair of the SEC, instead of touting CAT’s virtues, ordering the staff “to undertake a comprehensive review of the CAT” so it can “take a hard look at the reporting requirements and scope of what is collected.”<sup>35</sup> That scope, according to fellow SEC Commissioners Hester Peirce and Mark Uyeda, means that that the CAT “is a system that one would expect to find in a dystopian surveillance state.”<sup>36</sup>

This language mirrors the industry’s talking points. Some of CAT’s critics say that its “sweep is unprecedented and would take us far down the road toward an Orwellian surveillance state”;<sup>37</sup> others paint a picture of “dystopian surveillance.”<sup>38</sup> It is certainly true that the CAT is a massive database, but that is commensurate with the size of the market the SEC regulates. The industry might want a huge market and a tiny oversight tool, but that would leave investors unprotected. Without the CAT, the SEC would be “unable to track a large amount of trading every day.”<sup>39</sup>

Nor is it clear why CAT’s critics equate a tool that tracks securities trades with “Orwellian” or “dystopian” surveillance. The term Orwellian “is often used to describe a totalitarian dystopia that is characterized by government control and subjugation of the people.”<sup>40</sup> It references a “situation in which government actions impinge on the freedoms and welfare of society.”<sup>41</sup> “Orwellian” conjures images of a society “where communications and movements are strictly monitored by

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<sup>30</sup> *Id.* at 454.

<sup>31</sup> *Id.*

<sup>32</sup> Hughes, *supra* note 26.

<sup>33</sup> Benjamin Schiffrin, [Chair Atkins’s Agenda is the Industry’s Agenda](#), Better Markets (Aug. 11, 2025).

<sup>34</sup> Dolmetsch, *supra* note 11.

<sup>35</sup> Paul S. Atkins, Chairman, [Prepared Remarks Before SEC Speaks](#) (May 19, 2025).

<sup>36</sup> Alpert, *supra* note 13.

<sup>37</sup> William P. Barr, [The Securities and Exchange Commission is Watching You](#), The Wall Street Journal (Apr. 15, 2024).

<sup>38</sup> Declan Harty, [‘Dystopian surveillance, suspicionless seizures’: Wall Street market monitor under attack](#), Politico (Aug. 5, 2024).

<sup>39</sup> Karmel, 37 J. Corp. L. at 900.

<sup>40</sup> Peter J. Guffin, *Why Study Privacy Law*, 33 Me. B.J. 35, 37 n.1 (2018).

<sup>41</sup> Rachel Rosen, *We are Family, All My Brothers, Sisters, Murderers, and Me: Consent, Privacy, and the Use of Familial DNA in Criminal Investigations*, 90 UMKC L. Rev. 191, 209 n.204 (2021) (citing Meriam-Webster).

the government.”<sup>42</sup> The scope of the information CAT collects needs to be large for the CAT to be meaningful, but CAT’s size is not a basis for comparing it to a tool to subjugate people, eliminate their freedoms or welfare, or control their communications and movements.

Even further afield is the characterization of the CAT as dystopian. Dystopian refers to an “imagined world or society in which people lead wretched, dehumanized, fearful lives.”<sup>43</sup> The fact that CAT’s critics need to resort to such inapposite comparisons confirms the essentially unobjectionable nature of a tool that tracks the life cycle of a securities transaction.

To be sure, some concerns about the CAT are legitimate. It has proven more costly than anticipated.<sup>44</sup> It would also store sensitive financial information that must be safeguarded.<sup>45</sup> But the securities industry earned pre-tax net income of over \$75 billion in 2024.<sup>46</sup> And we’ve advocated for the “highest security and encryption standards for CAT data.”<sup>47</sup> Neither the need to control costs nor the need to prevent hacks is a reason to kill the CAT.

## CAT’s Critics Fear its Effectiveness

There is no good reason to dismantle the CAT. There should be little opposition to a tool that is supposed to help regulators “monitor, as close to real-time as possible, all market activity so that they can identify securities law . . . violations, as well as nascent risks to firms, investors, and markets, and then take necessary action to address them.”<sup>48</sup> The only parties who stand to benefit are those who would rather conceal their activities in the securities markets.

One such firm is Citadel Securities, one of the largest high-frequency trading (HFT) firms on Wall Street.<sup>49</sup> HFTs are “a secretive breed of parasitic financial players” who “fleece the global public of savers and investors.”<sup>50</sup> Before the CAT, the SEC was unable to monitor their conduct:

Due to the speed of the trades and complexity of the algorithms, it [was] difficult for regulators to detect when HFTs engage in manipulative or illegal behavior. Officials . . . openly admitted that they lack[ed] the tools to effectively monitor HFT.<sup>51</sup>

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<sup>42</sup> Mary Ann Scholl, *GPS Monitoring May Cause Orwell to Turn in His Grave, But Will It Escape Constitutional Challenges? A Look at GPS Monitoring of Domestic Violence Offenders in Illinois*, 43 J. Marshall L. Rev. 845, 855 (2010).

<sup>43</sup> <https://www.merriam-webster.com/dictionary/dystopia>.

<sup>44</sup> Alpert, *supra* note 13.

<sup>45</sup> Patrick Temple-West, *Crapo links Equifax hacking to consolidated audit trail*, Politico (Sep. 26, 2017).

<sup>46</sup> *Capital Markets Fact Book*, Securities Industry and Financial Markets Association.

<sup>47</sup> [Letter from Better Markets to SEC Chairman Jay Clayton](#) (Jan. 24, 2020).

<sup>48</sup> James A. Fanto, *The Vanishing Supervisor*, 41 J. Corp. L. 117, 156 (2015).

<sup>49</sup> See, e.g., Anto Antony and Matthew Martin, [Wall Street’s High-Frequency Traders are Rushing into Saudia Arabia](#), Bloomberg (May 15, 2025).

<sup>50</sup> Tim Adams, [Flashboys: Cracking the Money Code review - Michael Lewis exposes the international money markets](#), The Guardian (Apr. 7, 2014).

<sup>51</sup> Matt Prewitt, *High-Frequency Trading: Should Regulators Do More?*, 19 Mich. Telecomm. & Tech. L. Rev.

The CAT “aims to address the issues surrounding . . . HFT.”<sup>52</sup> That’s because the best way for the SEC “to keep pace with those traders taking advantage of HFT is for the SEC to employ tech-savvy techniques of its own.”<sup>53</sup> And the CAT makes “the jobs of SEC regulators easier in compiling data, forming new regulations, and staying on pace with advancing technology.”<sup>54</sup>

Now, the SEC is able to break down in detail the algorithms and trading strategies employed by the high-frequency traders it charges. This may be, in part, because of the new tools created to help the agency dissect market activity, such as the [CAT].<sup>55</sup>

Given the threat the CAT poses to HFTs’ ability to evade regulatory scrutiny, it’s not surprising that Citadel has challenged the CAT in court. In doing so, it accused the SEC of trying to “keep the American people in the dark about the adverse impacts of its unprecedented effort to subject the national securities markets to an Orwellian surveillance regime.”<sup>56</sup> As demonstrated above, this description of the CAT makes no sense, and it makes even less sense when considering that all the records the CAT collects already exist elsewhere. The problem that necessitated the CAT wasn’t that trading records did not exist; it was that the SEC had to “rely on data from FINRA, exchanges, and firms . . . to track the market.”<sup>57</sup> So “the concerns about investor privacy are overblown, since the data was already being collected by the exchanges and FINRA.”<sup>58</sup> That is why, in the view of David Slovic, a former SEC lawyer now at Barnes & Thornburg, the industry is simply using hyperbolic language to “cloak its true reason for opposing the CAT.”<sup>59</sup>

“It makes the SEC’s lift a lot lighter,” said Slovic. “Their cases against Wall Street are going to be more effective and, of course, Wall Street doesn’t like that.”<sup>60</sup>

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131, 47 (2012); see also *Joint industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail*, 81 Fed. Reg. 30,614, 30,696 (May 17, 2016) (“Because data on high-frequency trading tends to be fragmented across many data sources, it is difficult even for regulators to thoroughly analyze their aggregate activity level, study how their activity on one exchange affects their activity on another, and study the effect of particular high-frequency strategies on market quality.”).

<sup>52</sup> Karmel, 37 J. Corp. L. at 900.

<sup>53</sup> Alyse Gould, *Regulating High-Frequency Trading: Man v. Machine*, 12 J. High Tech. L. 273 (2011).

<sup>54</sup> *Id.*

<sup>55</sup> John I. Sanders, *High-Frequency Traders: How the SEC can Tighten Regulation While Maintaining the Benefits of a Competitive Market*, 13 Am. U. Bus. L. Rev. 315, 328 (2024).

<sup>56</sup> Dolmetsch, *supra* note 11.

<sup>57</sup> Karmel, 37 J. Corp. L. at 900.

<sup>58</sup> Dolmetsch, *supra* note 11.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*



## Conclusion

Jay Clayton, President Trump's first SEC Chair, recognized that the CAT was designed "to facilitate cross-market oversight and analysis, thereby improving market integrity and investor protection."<sup>61</sup> He understood that the "main markets regulator should have access to a forensic trail that enables us to assess what happened if a market event occurred."<sup>62</sup> Clayton's SEC did not attempt to kill the CAT because the CAT makes our markets safer, and neither should the SEC under Chair Atkins.

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<sup>61</sup> Chairman Jay Clayton, [Consolidated Audit Trail: Focus on Effective Implementation Puts CAT on Track](#) (Dec. 16, 2020).

<sup>62</sup> Dave Michaels, [SEC Urges Exchanges to End Standoff on Trading Data](#), The Wall Street Journal (Mar. 19, 2018).





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