



January 29, 2021

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

**Re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (Release No. 34-90826)**

Dear Ms. Countryman:

The American Securities Association<sup>1</sup> provides these comments in response to the proposed amendment (“Proposal”) to the National Market System Plan Governing the Consolidated Audit Trail (“CAT”) submitted by the self-regulatory organizations (“SROs”) charged with operating the CAT. The ASA strongly urges the Securities and Exchange Commission (“SEC”) to reject the Proposal as it would seek to unfairly shift liability costs for CAT breaches from SROs – who are responsible for implementing security measures for the CAT – to broker-dealers and their customers.

As the ASA has stated in several previous comment letters to the SEC, we support the establishment of a market-wide surveillance system that allows regulators to examine potential vulnerabilities and fraud in the U.S. equity markets. However, we have steadfastly opposed the collection of retail investor financial and personal information (“PII”) by the CAT. Gathering the PII of virtually every American investor and tracking every share of stock they decide to trade will create a vast trove of data ripe for hackers and an unprecedented invasion of their privacy, with no regulatory benefit to the SEC’s enforcement of insider trading. In short, there is no legal, constitutional, or regulatory case for the invasion of privacy associated with the collection of this data that will hold up under judicial scrutiny.

<sup>1</sup> 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 mission 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.





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### **The Proposal Generally.**

As it relates to the Proposal, we believe it would be entirely irresponsible to deny broker-dealers the opportunity for indemnification in the wake of a breach for which they bear no responsibility, particularly when the SROs operating the CAT are obligated to secure the data that is collected. The Proposal would effectively hold brokers responsible for the malfeasance and incompetence of the SROs and their contractors. We believe this would incentivize the SROs to de-prioritize data security for the CAT because they will be able to “pass the buck” onto others when (not if) a breach or misuse of data occurs.

The recent hacks of several government agencies including the Department of Homeland Security and Treasury Department are the latest confirmation that no federal database – regardless of how “secure” it may be – is safe from hackers. The Chinese Communist Party and other state actors have made clear of their intention to continuously target public and private organizations in the United States, severely threatening our national and economic security.

Because a hack of the CAT is *inevitable*, ASA members have sought to minimize the risks to America’s mom-and-pop investors, who are also their customers. We understand the very real concerns that our customers have about their personal and financial information being sent to a massive, centralized government database maintained in Washington D.C., and we will continue to legally resist any requirement by the SEC for their PII to be collected.

### **The “Independent” Report.**

We urge the SEC to view the third-party report and analysis referenced in the Proposal that was commissioned by the SROs with great skepticism. This ostensibly “independent” report fails to consider the costs of a data breach on non-SROs, namely broker-dealers and their customers. Specifically, it fails to even contemplate the damage to the brand and trust that broker-dealers have built up with their retail clients for decades. The report also does not provide any support for the argument that broker-dealers should be accountable for the wrongdoing or misuse of data by SRO employees or contractors. We understand that roughly 3,000 random individuals will have access to the highly sensitive information under the CAT at any given time. Therefore, it is extremely unreasonable to expect broker-dealers to be responsible for a breach, malfeasance, or incompetence caused directly or indirectly by these individuals.

The report also conveniently avoids any serious discussion of the real (not imagined) risks posed by nation state actors, like China and Russia, who employ armies of personnel to steal the private information of American citizens. In the wake of last month’s hacks on numerous “secure” government agencies, this omission renders the “independent” report paid for by the SROs devoid of any legitimate consideration.





Rather than paying a third party to deliver a report with a pre-determined conclusion, we suggest that it may have been much more useful if all market participants had come together to discuss where the liability from a breach should fall. If such a discussion were to have occurred, it is highly probable that all parties would have agreed to take a position that the liability for any breach of the CAT should be placed on the regulator that mandated its existence by law.

**Conclusion.**

Nothing in the Proposal would advance the SEC's important mission of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. In fact, what is clear from the Proposal is that the SROs fully understand that it will be *impossible* for them to protect the personal and financial information of America's retail investors and they are trying to use a conflicted third-party report to help them evade the costs associated with that reality. We believe that the SEC is smart enough to see right through this charade and we urge the Commission to reject the Proposal.

Sincerely,

*Christopher A. Iacovella*

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Chief Executive Officer  
American Securities Association

