

VIA EMAIL (rule-comments@sec.gov)

June 21, 2023

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-07-23

Dear Ms. Countryman:

Consolidated Audit Trail, LLC (“CAT LLC”), on behalf of the Participants¹ in the National Market System Plan Governing the Consolidated Audit Trail (the “CAT NMS Plan” or “Plan”), appreciates the opportunity to comment on the Securities and Exchange Commission’s proposal to amend Regulation Systems Compliance and Integrity (“Reg SCI Proposal”).² CAT LLC urges the Commission to consider the potentially substantial adverse effect of the SEC’s proposals on the costs and security of the CAT given its reliance on cloud service providers (“CSP”). CAT LLC also believes that the additional costs outweigh any additional regulatory benefit of the proposed changes related to systems intrusions. Finally, CAT LLC requests further guidance regarding the proposed new mapping requirement with regard to the safe harbor provision for policies and procedures.

1. Third-Party Provider Management: Cloud Service Providers

In its discussion of third-party provider management issues in the Reg SCI Proposal, the SEC emphasized that, given the degree to which CSP services may be integral to the operation of SCI systems, SCI entities generally should examine closely any potential relationship and utilization of CSP services to ensure that such services can and do comply with Reg SCI. In this context, the SEC noted that SCI entities should consider any lock-in effects that utilizing CSP-specific tools might have and their exit strategies with respect to the use of a CSP (*e.g.*, consider utilizing different CSPs or on-premises back-up tools).³ Related to this general statement, the SEC proposes to require that SCI entities have a third-party provider management program that

¹ The twenty-five Participants of the CAT NMS Plan are: BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, Miami International Securities Exchange LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc. CAT LLC notes that the comments set forth in this letter represent the consensus of the Participants, but that all Participants may not fully agree with each comment set forth in this letter.

² Securities Exchange Act Rel. No. 97143 (Mar. 15, 2023), 88 Fed. Reg. 23146 (Apr. 14, 2023) (“Reg SCI Proposal”).

³ Reg SCI Proposal at 23178.

includes certain elements, including a risk-based assessment of each third-party provider's criticality to the SCI entity, including analyses of third-party provider concentration, of key dependencies if the third-party provider's functionality, support, or service were to become unavailable or materially impaired, and of any potential security, including cybersecurity, risks posed.⁴ Furthermore, the SEC proposes to require the business continuity and disaster recovery plans of SCI entities be "reasonably designed to address the unavailability of any third-party provider that provides functionality, support, or service to the SCI entity without which there would be a material impact on any of its critical SCI systems."⁵ In determining how to satisfy this proposed requirement, an SCI entity could consider if use of a CSP for its critical SCI systems also warrants maintaining an "on-premises" backup data center or other contingency plan which could be employed in the event of such outage scenarios.

CAT LLC relies on CSPs for the operation of the CAT. CAT LLC does not have critical SCI systems. However, to the extent that the SEC's proposal is meant to require the CAT to utilize different CSPs or on-premises back-up tools, CAT LLC urges the Commission to reconsider such proposals. Such a proposal would likely double the cost of the CAT.⁶ It also would double its security risk, as CAT Data would be located at two CSPs. Given the specialized expertise and technology needed to operate the CAT, such requirements also would raise questions regarding the feasibility of CAT LLC's ability to comply with them. Accordingly, CAT LLC urges the Commission to analyze the adverse cost and security effects of any such requirement.

Moreover, CAT LLC encourages the Commission to consider other approaches that are more cost-effective with better security outcomes to address any regulatory concerns about the use of CSPs by SCI entities. In particular, CAT LLC does not believe that the Commission provides a detailed analysis for its statement that reliance on a single CSP raises concerns about a single point of failure. The Commission fails to consider potential variances across CSPs, including such important considerations as, for example, the underlying data center locations, technology in use, and redundancies/fault tolerances at the CSP in question. The Commission also does not cite to industry best practices that would support its position with regard to CSPs. Furthermore, the Commission does not recognize that an SCI entity would be in the best position to conduct its own risk assessment regarding the use of a single CSP.

2. Systems Intrusions

a. Elimination of De Minimis Systems Intrusion Reporting Process

Reg SCI currently states that the SEC notification requirements in Rules 1002(b)(1) through (4) do not apply to any de minimis SCI events, including systems intrusions. Instead, SCI entities are currently required to make, keep and preserve records relating to all such SCI events, and provide the SEC with a quarterly report of de minimis systems intrusions and

⁴ Proposed Rule 1001(a)(2)(ix) of Reg SCI.

⁵ Proposed Rule 1001(a)(2)(v) of Reg SCI.

⁶ CAT costs in 2022 totaled approximately \$179 million, the 2023 CAT budget is approximately \$233 million, and the 2024 CAT budget is likely to be comparable or higher.

disruptions.⁷ The SEC proposes to eliminate systems intrusions from the types of SCI events that may make use of this exception for de minimis SCI events and to be quarterly reported. Instead, the SEC proposes to require that each systems intrusion be reported under the framework in Rules 1002(b)(1) through (4).⁸

CAT LLC believes that the current quarterly reporting process for de minimis systems intrusions strikes the appropriate balance between providing information regarding systems intrusions while minimizing the regulatory requirements related to such de minimis events. The existing quarterly reporting requirements appropriately focuses the Commission's and SCI entities' resources on the more significant systems disruptions. Accordingly, CAT LLC would not recommend the adoption of the proposed reporting changes for de minimis systems intrusions.

b. Expansion of Definition of Systems Intrusion

Reg SCI currently defines a "systems intrusion" as "any unauthorized entry into the SCI systems or indirect SCI systems of an SCI entity."⁹ The SEC proposes to expand the definition of systems intrusion to include two additional types of cybersecurity events: (1) any "[c]ybersecurity event that disrupts, or significantly degrades, the normal operation of an SCI system,"¹⁰ regardless of whether the event resulted in an entry into or access to them; and (2) any "[s]ignificant attempted unauthorized entry into the SCI systems or indirect SCI systems of an SCI entity, as determined by the SCI entity pursuant to established reasonable written criteria."¹¹ CAT LLC recommends that the SEC continue to use the current definition of systems intrusion, and not to expand the definition to include the two new categories. Expanding the definition as proposed is unwarranted and unwise given the breadth of different types of activity both definitions would cover.

3. Industry Standards

Rule 1001(a)(4) of Reg SCI states that an SCI entity's policies and procedures will be deemed to be reasonably designed if they are consistent with "current SCI industry standards." If an SCI entity chooses to rely on this safe harbor, the SEC proposes to require such SCI entity's policies and procedures to include "[a]n identification of the current SCI industry standard(s) with which each such policy and procedure is consistent, if any."¹² CAT LLC requests additional guidance on the level of specificity that would be required for this mapping exercise

⁷ Rule 1002(b)(5) of Reg SCI.

⁸ Rule 1002(b) provides the framework for notifying the SEC of SCI events including, among other things, requirements to: notify the Commission of the event immediately; provide a written notification on Form SCI within 24 hours that includes a description of the SCI event and the system(s) affected, with other information required to the extent available at the time; provide regular updates regarding the SCI event until the event is resolved; and submit a final detailed written report regarding the SCI event.

⁹ Definition of systems intrusion in Rule 1000 of Reg SCI.

¹⁰ Proposed paragraph (2) of the definition of systems intrusion in Rule 1000 of Reg SCI.

¹¹ Proposed paragraph (3) of the definition of systems intrusion in Rule 1000 of Reg SCI.

¹² Proposed Rule 1001(a)(2)(xi) of Reg SCI.

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(e.g., providing a reference to industry standards for each policy, section of policy, or other approach).

Respectfully submitted,

/s/ Brandon Becker

Brandon Becker
CAT NMS Plan Operating Committee Chair

cc: The Hon. Gary Gensler, Chair
The Hon. Hester M. Peirce, Commissioner
The Hon. Caroline A. Crenshaw, Commissioner
The Hon. Mark T. Uyeda, Commissioner
The Hon. Jaime Lizárraga, Commissioner
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