



March 14, 2019

The Honorable Michael Crapo
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and
Urban Affairs
United States Senate
Washington, DC 20510

RE: Data Privacy Submission Concerning Collection of Personally Identifiable Information (PII) by the Consolidated Audit Trail (CAT)

Dear Chairman Crapo and Ranking Member Brown:

The American Securities Association (ASA)¹, representing our nation's Main Street and regional financial services companies, welcomes the opportunity to provide feedback to the Senate Banking Committee regarding the collection, use, and protection of sensitive financial information by financial regulators and private companies. We appreciate the Committee's focus on the security of personal data, as this is an issue of growing importance and concern for millions of American households.

As the Committee undertakes its review of how personal data is collected and used by financial regulators, we strongly believe the potential collection of retail investor personally identifiable information (PII) under the Consolidated Audit Trail (CAT) requires your attention. As you are aware, the Securities and Exchange Commission (SEC) adopted a rule in 2012, following the May 2010 "flash crash", creating the CAT in order to capture customer and order event information across the equity markets.

The ASA fully supports the ability of the SEC to properly oversee markets and the creation of a market-wide surveillance system. However, absent further action by the SEC or the CAT plan processor FINRA, the CAT will collect and store the PII of millions of America's retail investors, creating a target-rich environment for bad actors. Neither the SEC, nor any other entity needs to collect the PII of every American saver to achieve the stated goal of the CAT.

As the members of the Senate Banking Committee are well aware, massive breaches of PII at government agencies in recent years have eroded the trust Americans have in the ability of

¹ 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 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.



government to safeguard their data. Once it is fully operational, the CAT will be one of the largest repositories of information created in history, and a prime target for hackers who will have ready access to the personal information of every individual that conducts a transaction in the U.S. equity markets. This should alarm all Americans.

The ASA welcomed the recent news that the stock exchanges had terminated the contract with Thesys Technologies – an unregulated third party – to be the CAT plan processor. The ASA also strongly supports the Financial Industry Regulatory Authority (FINRA) taking over as the plan processor for CAT. Since 1998, FINRA and its predecessor organization have operated the Order Audit Trail System (OATS), which allows FINRA to monitor and analyze the full cycle of orders for National Market System (NMS) and over the counter (OTC) stocks. Today, brokerage firms already submit much of the same information that would be collected under the CAT to FINRA, and FINRA has demonstrated over the years that it can effectively oversee the brokerage industry’s daily equity transactions without collecting retail investor PII.

While the transition to a new plan processor presents an opportunity for the SEC and other parties to reject the future collection of retail investor PII by the CAT, Congress, of course, also plays a critical role. The collection of retail investor PII in no way bolsters the ability of the SEC to oversee equity markets more effectively (the agency has had no issue bringing insider trading cases since FY2011 totaling 387), and only presents serious risks to American investors. We believe that this Committee – through its oversight role or through legislation– should prioritize the security of American investors’ PII and ensure the CAT does not become the world’s largest one-stop shop for cybercriminals.

We urge the Committee to stand with the overwhelming majority of Americans who oppose sending their PII to the CAT. A recent ASA survey found that while 75% of American investors trust their broker to keep their information secure, **nine in ten** are opposed to the government requiring their broker to send their information to an unregulated third-party.

The ASA survey results should come as no surprise considering so many Americans have been targeted in data breaches and have suffered the horrible consequences from identity theft. According to a 2018 Harris Poll survey, nearly 60 million Americans have been affected by identity theft. A report released earlier this year from Symantec found 143 million American consumers were victims of cybercrime in 2017 alone. This is especially concerning for America’s seniors and highlights the need to protect all Americans from the CAT’s glaring data security vulnerabilities.

The ASA recently submitted a letter–along with the aforementioned survey–to SEC Chairman Jay Clayton on this important issue, which is attached hereto as Exhibit A.

Conclusion

We believe the continued potential for PII collection under CAT represents one of the largest risks to the personal data security of American investors. We implore members of the Committee



to – if necessary – assert their constitutional prerogative to protect America’s retail investors and retirement savers. The ASA thanks the Committee for its leadership on data privacy and stands ready to work with you on this critical issue.

Sincerely,

Christopher A. Iacovella
Chief Executive Officer
American Securities Association