

June 15, 2026

Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: Concept Release on Consolidated Audit Trail and Other Audit Trails and Data Sources
Docket ID: S7-2026-12 [RIN 3235-AN54]

To Whom It May Concern:

We appreciate the opportunity to provide input to assist the Securities and Exchange Commission in its comprehensive review of the Consolidated Audit Trail (CAT).¹ The Cato Institute is a public policy research organization dedicated to the principles of individual liberty, limited government, free markets, and peace, and the Center for Monetary and Financial Alternatives focuses on identifying, studying, and promoting alternatives to centralized, bureaucratic, and discretionary monetary and financial regulatory systems. The opinions we express here are our own.

This administration's proposal to review and reform the CAT after years of bloat and ineffective policy is a welcome development. We encourage the Securities and Exchange Commission (henceforth, the Commission) to pursue reform of the CAT, but it is important not to get lost in the weeds of tweaking the system. The Commission must eliminate the CAT.

The CAT Is Not Necessary

The concept release rests on the premise that the CAT is necessary for cross-market surveillance and enforcement. But the CAT fails a test of necessity. Regulators reconstructed the 2010 Flash Crash — the event cited as the CAT's primary justification — before the CAT existed, using data sources available at the time to catch the responsible parties.²

¹ Securities and Exchange Commission, "Concept Release on Consolidated Audit Trail and Other Audit Trails and Data Sources," Federal Register, April 20, 2026, <https://www.federalregister.gov/documents/2026/04/20/2026-07651/concept-release-on-consolidated-audit-trail-and-other-audit-trails-and-data-sources>.

² "Findings Regarding the Market Events of May 6, 2010," Commodity Futures Trading Commission and Securities and Exchange Commission Joint Report, September 30, 2010,

<https://www.sec.gov/news/studies/2010/marketevents-report.pdf>; Office of Public Affairs, "Futures Trader

1000 Massachusetts Avenue, N.W., Washington, D.C., 20001

(202)-842-0200 • www.cato.org/cmfa

If the Commission genuinely needs data for a specific investigation, the constitutionally sound path is for the Commission to use a judicial process to target production of essential data—not to pre-emptively collect records from every market participant. The Fourth Amendment does not yield to assertions of regulatory convenience.

A Constitutional Nightmare

But that is just what the CAT is: regulatory convenience. The Fourth Amendment should guarantee Americans protection from warrantless searches of their financial data; however, the Commission built the CAT in reliance on a judicial exception to the Fourth Amendment, the third-party doctrine. The CAT violates Americans' basic privacy rights.³

The third-party doctrine is outdated.⁴ When the doctrine was established, government's ability to collect massive amounts of records was limited in scope, but that is no longer the case. Modern technology has allowed the state to coalesce large datasets of Americans' financial records. The Supreme Court warned about this potential problem when it originally ruled on the third-party doctrine.⁵ Justices Lewis Powell and Harry Blackmun, who joined the majority, believed that a "significant extension of the regulations' reporting requirements, however, would pose substantial and difficult constitutional questions."⁶

And the Commission also violates the Fifth Amendment's protections against self-incrimination as well. By compelling investors and brokers to hand over years' worth of records and any future market orders, the Commission is forcing both investors and brokers to produce records that may incriminate themselves.⁷

Additionally, the Commission's warrantless search of financial data likely violates the First Amendment, which bars the government from forcing individuals to reveal groups they

Charged with Illegally Manipulating Stock Market, Contributing to the May 2010 Market 'Flash Crash," U.S. Department of Justice, Press Release 15-481, April 21, 2015, <https://www.justice.gov/archives/opa/pr/futures-trader-charged-illegally-manipulating-stock-market-contributing-may-2010-market-flash>.

³ Thomas A. Berry and Kimberly Coleman, "The Courts Should Put the SEC's 'CAT' Back in the Bag," Cato at Liberty (blog), June 1, 2026, <https://www.cato.org/blog/courts-should-put-secs-cat-back-bag>.

⁴ Nicholas Anthony, "The Right to Financial Privacy: Crafting a Better Framework for Financial Privacy in the Digital Age," Cato Institute Working Paper No. 69, October 14, 2022, <https://www.cato.org/working-paper/crafting-better-framework-financial-privacy-digital-age>.

⁵ California Bankers Association v. Shultz, 416 U.S. 21, 78–79 (1974); Norbert J. Michel and Christian Kruse, "Should the Consolidated Audit Trail have a Future?" Cato at Liberty (blog), February 24, 2026, <https://www.cato.org/blog/should-consolidated-audit-trail-have-future>.

⁶ California Bankers Association v. Shultz, 416 U.S. 21, 78 (1974).

⁷ Thomas A. Berry and Kimberly Coleman, "The Courts Should Put the SEC's 'CAT' Back in the Bag," Cato at Liberty (blog), June 1, 2026, <https://www.cato.org/blog/courts-should-put-secs-cat-back-bag>.

associate with.⁸ When investors hold positions in companies or funds aligned with particular causes, the CAT’s collection of those transactions operates as a compelled disclosure of associational activity—precisely the harm the First Amendment prohibits.

A Surveillance Database Too Big to Secure

The CAT also has documented vulnerabilities in its internal data security. A March 2025 Inspector General report found that the “risks of unauthorized disclosure and misuse of CAT data were elevated.”⁹

The non-redacted findings of the report show a pattern of failures within the Commission over the handling of sensitive information:

1. 28 individuals had access that did not match their approved authorization;
2. On four occasions, users were able to extract more information than permitted; and
3. Inefficient unique identifiers and a lack of oversight did not allow the Commission to protect against external disclosure of data.

Beyond these internal security issues, maintaining a central repository of years of identifiable order activity from every American who participates in U.S. equity and options markets increases the chances of a breach due to its heightened attractiveness to hackers— especially since it is the largest of its kind. The CAT collects trillions of observations a year, each one including an identifier that authorities could use to track American investors.¹⁰ And a breach of such a collection of near real-time order activity for every market participant would cause severe financial damage.

And such an attack on government infrastructure is imaginable. In 2015, a breach at the Office of Personnel Management exposed the records of approximately 21.5 million federal

⁸ Hester M. Peirce, “Statement of Hester M. Peirce in Response to Release No. 34-88890; File No. S7-13-19,” Securities and Exchange Commission, May 15, 2020, <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-response-release-34-88890-051520>; Christian Clase and Margot Cleveland, “The SEC’s Mass Surveillance of Investors’ Transactions Violates First Amendment,” The Federalist, June 8, 2026, <https://thefederalist.com/2026/06/08/the-secs-mass-surveillance-of-investors-transactions-violates-first-amendment/>; NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958); Americans for Prosperity Foundation v. Bonta, 594 U.S. 595 (2021).

⁹ Securities and Exchange Commission Office of Inspector General, “Additional Oversight and Monitoring of the SEC’s CAT Usage Is Needed,” Report No. 585, March 31, 2025, <https://www.sec.gov/files/additional-oversight-monitoring-secs-cat-usage-needed-rpt-585.pdf>.

¹⁰ Peggy Little & Caitlin Moyna, “A Call to Arms Against the SEC’s Spy Games,” RealClearPolitics, May 14, 2026, https://www.realclearpolitics.com/articles/2026/05/14/a_call_to_arms_against_the_secs_spy_games_154121.html.

employees and contractors.¹¹ A year later, hackers breached the Commission's own EDGAR filing system; the Commission later acknowledged that traders had used nonpublic information from that breach for illicit trading.¹² In 2020, a supply chain attack exploiting SolarWinds compromised software used at multiple federal agencies.¹³

Conclusion

The Commission's willingness to review the CAT encourages us, but we do not advise merely making slight adjustments to the program. The existence of the CAT poses constitutional and security concerns that regulatory fine-tuning cannot remediate.

Therefore, we recommend that the Commission eliminate the CAT on the grounds it is unconstitutional, presents a cybersecurity risk to the public, and the Commission does not need it to conduct its duties.

Sincerely,

Norbert Michel
Vice President and Director
Center for Monetary and Financial
Alternatives
Cato Institute

Christian Kruse
Research Associate
Center for Monetary and Financial
Alternatives
Cato Institute

¹¹ "Cybersecurity Incidents," U.S. Office of Personnel Management, 2015, <https://web.archive.org/web/20160106161805/https://www.opm.gov/cybersecurity/cybersecurity-incidents/>.

¹² Jay Clayton, "Statement on Cybersecurity," Securities and Exchange Commission, September 20, 2017, <https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20>.

¹³ "Advanced Persistent Threat Compromise of Government Agencies, Critical Infrastructure, and Private Sector Organizations (Alert AA20-352A)," Cybersecurity and Infrastructure Security Agency, December 17, 2020, <https://www.cisa.gov/news-events/cybersecurity-advisories/aa20-352a>.