

# United States Senate

WASHINGTON, DC 20510

June 16, 2022

Mr. Gary Gensler  
Chairman  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Dear Chairman Gensler:

We write to express our continued concerns about the privacy and national security risks associated with the Consolidated Audit Trail (CAT). As you are well aware, the CAT is scheduled to become fully operational in July of this year. The CAT will collect and store the personal and financial information (PII) of every investor that trades on U.S. stock exchanges and it will be one of the largest databases of PII ever created.

Over the last several years, members of Congress and the private sector have written numerous letters and frequently called on the Securities and Exchange Commission (SEC) to take steps to protect the privacy of American investors and protect the CAT from becoming a top target for cybercriminals and nation states that seek to do harm to the American economy.<sup>1</sup> The most obvious and necessary step the SEC can take to is to eliminate the collection of *all* PII under the CAT.

Collecting and storing PII serves no regulatory purpose, it's unconstitutional,<sup>2</sup> and the SEC's ability to monitor potential risks in the equity market will not be diminished without PII.

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<sup>1</sup> See e.g. November 2020 letter from the American Securities Association, available at <https://www.sec.gov/comments/s7-10-20/s71020-8065865-225955.pdf>; July 2019 letter from Sens. Kennedy, Moran, Tillis, Cramer, Cotton Rounds, Wicker to SEC Chair Clayton, available at <https://www.kennedy.senate.gov/public/2019/7/sen-john-kennedy-r-la-leads-letter-to-sec-chairman-concerning-data-privacy-and-the-consolidated-audit-trail>; May 2012 blog post from Securities Industry and Financial Markets Association CEO Ken Bentsen, available at <https://www.sifma.org/resources/news/the-secs-unfinished-business-protecting-investors-personal-information-in-the-cat/>

The SEC also lacks the statutory and Constitutional authority to engage in this type of PII collection. Collecting the sensitive personal and financial information of individuals without any suspicion of wrongdoing is a clear violation of the Fourth Amendment protection against

unreasonable searches and seizures. Forcing broker-dealers to provide this information under threat of significant penalties compounds this unlawful government surveillance.

In August 2020, the SEC proposed a rule intended to provide meaningful protections for individuals that trade stocks and whose PII would be collected by the CAT.<sup>3</sup> Inexplicably, the SEC has delayed finalizing this Proposal for nearly two years, even as the CAT is about to come online and an attack against the database continues to be a legitimate threat. The SEC should immediately finalize the August 2020 proposal and include a prohibition against collecting any retail investor PII as part of a final rule.

Cybercriminals supported by the Chinese Communist Party, Russian government, and other nation states remain a serious threat to our national security and to the personal security of millions of Americans. In October 2019, the Senate Banking Committee also learned that about 3,000 individuals will have full access to the PII collected by the CAT.<sup>4</sup> This raises the possibility that investor PII could be stolen or misappropriated by employees of the SEC, Financial Industry Regulatory Authority (FINRA), or contractors working with the CAT. It is well known that the Chinese Communist Party uses blackmail as a form of espionage to acquire information on Americans and American technology.

Such concerns are not unfounded when considering a recent Government Accountability Office report that found 462 cases of Internal Revenue Service (IRS) employees improperly accessing private tax information over the past decade.<sup>5</sup> All it takes is one individual to steal PII under the CAT to destroy any public or market confidence in the ability of the CAT to support the SEC's role as a regulator.

Over the last several months, the SEC under your leadership has embarked on an unprecedented rulemaking agenda that has prioritized the interests of the ESG-industrial complex and Wall Street over the interests of Main Street investors. Diverting the SEC's finite resources in such a manner undermines trust and confidence in the SEC and weakens investor protection.

Congress has raised significant concerns regarding the CAT through Financial Services General Government Subcommittees since 2019. The SEC must immediately finalize the August

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<sup>3</sup> Proposed Amendments to the National Market System Plan Governing the Consolidated Audit Trail to Enhance Data Security (85 FR 65990)

<sup>4</sup> "Oversight of the Status of the Consolidated Audit Trail," Senate Banking Committee (Oct. 22, 2019)

<sup>5</sup> <https://www.gao.gov/assets/gao-22-105872.pdf?source=email>

2020 proposal and prohibit the collection of *any* PII under the CAT. American investors deserve better than inaction from the SEC on this critical issue.

Sincerely,



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John Kennedy  
United States Senator



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Cindy Hyde-Smith  
United States Senator



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Jerry Moran  
United States Senator



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John Boozman  
United States Senator