



June 23, 2017

**Via Electronic Mail**

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re:** File No. SR-BatsBYX-2017-11; File No. SR-BatsBZX-2017-38; File No. SRBatsEDGA-2017-13; File No. SR-BatsEDGX-2017-22; File No. SR-BOX-2017-16; File No. SR-C2-2017-017; File No. SR-CBOE-2017-040; File No. SR-CHX-2017-08; File No. SR-IEX-2017-16; File No. SR-MIAX-2017-18; File No. SR-PEARL-2017-20; File No. SR-BX-2017-023; File No. SR-GEMX-2017-17; File No. SR-ISE-2017-45; File No. SR-MRX-2017-04; File No. SR-PHLX-2017-37; File No. SR-NASDAQ-2017-046; File No. SR- NYSE-2017-22; File No. SR-NYSEARCA-2017-52; File No. SR-NYSEMKT2017-26; File No. SR-FINRA-2017-011; Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a Fee Schedule to Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail

Dear Mr. Fields:

Managed Funds Association<sup>1</sup> (“**MFA**”) submits this letter in response to the above-referenced proposed rule changes (the “**Proposed Rules**”) by the self-regulatory organizations (“**SROs**”) that are the Plan Participants of the Consolidated Audit Trail (“**CAT**”) National Market System (“**NMS**”) Plan. The Proposed Rules adopt a fee schedule to establish the fees for industry members related to the NMS Plan governing the CAT—in essence, establishing a funding model for the CAT during this critical stage of initial design and development. MFA recognizes that the CAT is a complex undertaking that requires adequate resources, particularly given the highly sensitive information in the Central Repository and the need for strict security.

We are, however, concerned with the Proposed Rules, both with respect to the process for developing the CAT funding model, as well as the CAT funding model. As further discussed, we urge the Securities and Exchange Commission (“**Commission**”) to suspend the Proposed Rules pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (“**Exchange Act**”) and to take this opportunity to

---

<sup>1</sup> Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry’s contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and many other regions where MFA members are market participants.

expand industry participation in the CAT NMS Plan so funding controversies are less likely to arise in the future.

In MFA's letter of July 18, 2016 to the Commission on the CAT, MFA raised concerns with the governance of the CAT NMS Plan.<sup>2</sup> Specifically, we recommended that the CAT NMS Plan Operating Committee ("**Operating Committee**") should include market participant representatives<sup>3</sup> as the decisions of the Operating Committee, such as with respect to funding/fees and data security, will have a significant impact on market participants immediately and in the future. We believe having market participant representatives on the Operating Committee will assist with enhancing transparency to the CAT governance process and mitigating potential conflicts of interest. Otherwise, market participants will have no voice in a pricing system that affects them, with little ability to provide constructive feedback and influence changes to the CAT. This structure essentially replicates the problematic governance structure of the Securities Information Processors and the costs for market data. We believe the Proposed Rules and the CAT funding model is evidence that the process for establishing CAT fees and making other significant determinations that are certain to impact market participants is flawed in that it does not address potential conflicts of interest related to the commercial interests of Plan Participants. Unless the Commission addresses the governance process for establishing CAT fees, we are concerned that each time Plan Participants amend the fee schedule we will find ourselves in the same predicament without procedural safeguards to address conflicts of interest.

MFA shares concerns raised in the Securities Industry and Financial Markets Association's ("**SIFMA**") letter of June 6, 2017 on the Proposed Rules and the CAT funding model.<sup>4</sup> As investors, MFA's members welcome the competition in the securities markets among execution venues and broker-dealers. Such competition has benefited investors through lower transaction costs and greater choice in execution modalities and venues. We are troubled that the CAT funding model disproportionately imposes fees on non-Plan Participants, which may create a competitive disadvantage for such market participants. Since fees imposed on broker-dealers are likely to be passed through to investors, we are concerned that the CAT funding model could effectively limit investor choice in execution venues. Funding the CAT should be a shared responsibility without indirectly advancing the commercial interest of Plan Participants at the expense of others.

---

<sup>2</sup> Letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to Brent J. Fields, Secretary, SEC, on July 18, 2016 on the Consolidated Audit Trail, available at: <https://www.managedfunds.org/wp-content/uploads/2016/07/MFA-Letter-on-SEC-Consolidated-Audit-Trail.pdf>.

<sup>3</sup> *See id.* MFA recommended that the Operating Committee should include members that represent: an institutional investor, a broker-dealer with a substantial retail base, a broker-dealer with a substantial institutional base, a data management expert and a representative from a federal agency experienced with cybersecurity concerns as they relate to national security.

<sup>4</sup> Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, SEC, on June 6, 2017 on SEC Rel. No. 34-80710; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt a Fee Schedule to Establish the Fees for Industry Members Related to the National Market System Plan Governing the Consolidated Audit Trail, available at: <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>.

Mr. Fields  
June 23, 2017  
Page 3 of 3

Accordingly, MFA urges the Commission to suspend the Proposed Rules pursuant to Section 19(b)(3)(C) of the Exchange Act. We greatly appreciate the Commission's consideration of the issues raised in this letter and would be pleased to meet with the Commission and its Staff to discuss our comments in further detail. If you have any questions or comments, please do not hesitate to contact Jennifer Han, Associate General Counsel, or the undersigned at (202) 730-2600.

Respectfully submitted,

/s/ Stuart J. Kaswell  
Stuart J. Kaswell  
Executive Vice President & Managing Director  
General Counsel  
Managed Funds Association

CC: The Honorable Jay Clayton, Chairman  
The Honorable Michael S. Piwowar, Commissioner  
The Honorable Kara M. Stein, Commissioner  
Mr. Gary Goldsholle, Deputy Director, Division of Trading and Markets  
Mr. David S. Shillman, Associate Director, Division of Trading and Markets