



July 28, 2017

Via Electronic Mail

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

Re: Release No. 34-81067; File Nos. SR-BatsBYX-2017-11; SR-BatsBZX-2017-38; SRBatsEDGA-2017-13; SR-BatsEDGX-2017-22; SR-BOX-2017-16; SR-BX-2017-023; SR-C2- 2017-017; SR-CBOE-2017-040; SR-CHX-2017-08; SR-FINRA-2017-011; SR-GEMX-2017-17; SR-IEX-2017-16; SR-ISE-2017-45; SR-MIAX-2017-18; SR-MRX-2017-04; SR-NASDAQ- 2017-046; SR-NYSE-2017-22; SR-NYSEArca-2017-52; SR-NYSEMKT-2017-26; SR-PEARL- 2017-20; SR-PHLX-2017-37; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Establish Fees for Industry Members to Fund the Consolidated Audit Trail

Dear Mr. Fields:

Managed Funds Association¹ (“MFA”) submits this letter in response to the above-referenced order issued by the Securities and Exchange Commission (“**Commission**”) regarding proposals to establish fees for industry members to fund the consolidated audit trail (“**CAT**”) filed by the self-regulatory organizations (the “**Proposed Rules**”) that are the Plan Participants of the CAT National Market System (“**NMS**”) Plan (the “**Plan Participants**”). MFA greatly appreciates the Commission temporarily suspending the Proposed Rules to permit additional time to evaluate public comments.²

We ask the Commission to consider our comments from our prior comments as incorporated into this letter.³ We reiterate our concerns both with respect to the process for developing the CAT funding

¹ 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.

² SEC Release No. 34-81067, June 30, 2017, available at: <https://www.sec.gov/rules/sro/batsbyx/2017/34-81067.pdf>.

³ See letter from Stuart J. Kaswell, Executive Vice President & Managing Director, General Counsel, MFA, to Brent J. Fields, Secretary, SEC, on June 23, 2017 on Proposed Rule Changes to Establish Fees for Industry members to Fund the Consolidated Audit Trail, available at: <https://www.managedfunds.org/wp-content/uploads/2017/06/MFA->

model, as well as the CAT funding model. The build-out of the CAT is a highly technical and complex undertaking with significant funding requirements and broad implications for all market participants, including institutional and retail investors. This is precisely why we believe it is critical to have an appropriate governance process in place to oversee the development of the CAT NMS Plan and to ensure that the interests of all market participants are well served.

The Plan Participants in their response to comments received on the Proposed Rules (“**Response**”) state that they discussed the CAT funding model with the Development Advisory Group (“**DAG**”), which includes representatives from various broker-dealers, as well as associations of broker-dealers.⁴ We note that the DAG does not include any institutional investors, and that retail investors are represented only insofar as participation of retail broker-dealers in the DAG. The Response does not detail whether feedback from DAG members was reflected in the Proposed Rules. Regarding potential conflicts of interest, the Plan Participants do not believe it is necessary to employ an independent third party to evaluate an appropriate CAT fee because the CAT NMS Plan is a non-profit, to be operated on a break-even basis, and that fees are subject to SEC review and public comment. We do not believe these steps are sufficient to address potential conflicts of interest, as illustrated by the multiple public comments raising concerns over potential conflicts of interest with respect to the Proposed Rules. The CAT NMS Plan being a non-profit does not address the fact that exchanges with their own profit motive are allocating the costs of the CAT among all other market participants, including firms that use services that compete with exchanges or execution venues that directly compete with exchanges.

Accordingly, we continue to urge the Commission to address the governance process for establishing CAT fees by incorporating procedural safeguards to address conflicts of interest, such as by expanding industry participation to include broker-dealers and institutional investors in the CAT NMS Plan. If the Commission determines not to address the CAT governance structure by adding a mechanism to address potential conflicts of interest by Plan Participants, it will be all the more important for the Commission, as part of its proceedings to review the Proposed Rules, to conduct a thorough and ongoing analysis of the CAT, including a review of the real costs to build and operate the CAT, the terms of the contract between the Plan Participants and Thesys Technologies, LLC to build and operate the CAT, and the usage costs for CAT when it is built and operable.

[Ltr-CAT-Funding-Model.pdf](#); and 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>.

⁴ See letter from Plan Participants to Brent J. Fields, Secretary, SEC, dated June 29, 2017, at p. 2, available at: <https://www.sec.gov/comments/sr-batsbyx-2017-11/batsbyx201711-1832632-154584.pdf>.

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We greatly appreciate the Commission's consideration of the issues raised in this letter. 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