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June 22, 2017

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-0609

Re: File No. SR-BatsBYX-2017-11; File No. SR-BatsBZX-2017-38; File No. SR-BatsEDGA-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-NYSEMKT-2017-26; 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:

The FIA Principal Traders Group (“FIA PTG”)¹ appreciates the opportunity to comment in support of the letter filed by The Securities Industry and Financial Markets Association

¹ FIA PTG is an association of more than 20 firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy and has previously made recommendations about a variety of equity market structure issues, including Regulation NMS (See <https://ptg.fia.org/keywords/equity-market-structure>).

(“SIFMA”) on June 6, 2017 (the “Letter”),² in connection with the above-captioned proposed rule changes (the “Proposals”).

Separately from our support for SIFMA’s letter, FIA PTG would like to raise the question of whether the Consolidated Audit Trail (“CAT”) is a worthwhile endeavor. FIA PTG has a long history of advocating for electronic audit trails and data driven decision making. However, in light of the substantial progress made by the industry in regard to data collection since the CAT was first proposed over seven years ago,³ we now have to raise serious concerns about a data collection project of this size, scope and cost. The CAT project remains largely duplicative of existing and readily available electronic audit trails, and we believe the original goal of the CAT can be accomplished at a fraction of the cost. Moreover, market participants are already assessed fees for these existing audit trails. Therefore, in its current configuration, we believe the CAT is not justified in terms of costs and benefits. The Commission should bear in mind that additional costs assessed to broker-dealers will ultimately be passed on to small and large investors.

With respect to the specific Proposals at hand regarding CAT funding, FIA PTG agrees with SIFMA that the CAT funding model should have been the result of a collaborative exercise that included all of the impacted industry participants. A collaborative approach, allowing for public input during the exercise rather than after the fact, is standard with most industry-wide initiatives, so we struggle to understand how excluding other impacted market participants and taking input only from the Plan Participants is anything but prejudicial.⁴ As SIFMA noted, the CAT “is being created by and for the benefit of the Plan Participants.” Yet the funding model requires broker-dealers and ATSS to bear nearly 90% of the costs. The Plan Participants clearly have a conflict of interest when it comes to determining how much of the cost of this expensive and questionable endeavor they should bear. Since broker-dealers, like many FIA PTG members, already provide Plan Participants with a significant amount of regulatory funding through various membership and regulatory fees, having representation during the development of the funding model would have certainly been helpful in understanding the justification for charging market participants at all – not to mention the rationale for the ultimate structure proposed.

SIFMA is correct that if it is determined that broker-dealers must share in the cost of the CAT, they should not be required to cover any costs or expenses other than the direct costs to build and operate the system itself. We understand that the Plan Participants are going to incur other costs (insurance, consulting, audit etc.) in connection with the CAT, but those are the costs of doing business as self-regulatory organizations (“SROs”) and should not be allocated to market participants as suggested in the Proposals. And, obviously, the Plan

² <https://www.sec.gov/comments/sr-batsbzx-2017-38/batsbzx201738-1788188-153228.pdf>

³ For example: improvements to exchange audit trails, improvements to FINRA’s OATS database, and large trader reporting. Moreover, the MIDAS project has given the Commission much better visibility into market activity, albeit without the attribution available from the other audit trails.

⁴ We note that earlier this year the CAT Operating Committee assembled the CAT Advisory Committee comprised of a variety of individuals, including those from various market participants, but point out that this was well after the Operating Committee began their internal discussions.

Participants should absorb all costs incurred prior to the approval of the CAT in November, 2016.

FIA PTG also agrees with SIFMA that the tiering methods in the Proposals appear inequitable and unreasonable. Again, perhaps if our members had been represented in the discussions around the development of the allocation model we might be able to understand the justification for allocating at least 75% of the cost to broker-dealers (the number is higher if you include broker-dealer ATSs), but based on the explanation in the Proposals, we do not. We are also concerned that the tiered fee structure is applied inequitably. If the biggest driver of the cost of the CAT is indeed the processing and storing of messages, then Plan Participants should be subject to fees based on message traffic. Instead, while other market participants are charged based on message traffic, Plan Participants are not, and are instead subject to a tiering mechanism based on market share. The result is a model that appears to be designed to maximize costs for broker-dealers and minimize costs for Plan Participants.

Moreover, the Proposals do not sufficiently justify the proposed tiering methods. For example, the Proposals do not articulate why it makes sense to charge a fixed fee for all participants within a particular tier. FIA PTG is concerned that this approach could create incentives for market participants to limit their quoting and trading activities as their trading volumes approach higher tiers. This could lead to reduced liquidity, particularly in thinly traded small-cap stocks and lower volume exchange traded funds.

In addition to the comments made by SIFMA in the Letter, FIA PTG has an additional concern with the Proposals. We agree with the Commission that the not-for-profit structure of the CAT NMS, LLC (“the Company”) is an essential component of the CAT NMS Plan. Seemingly the achievement of this status is reliant on the Company being approved as a “business league” pursuant to Section 501(c)(6) of the Internal Revenue Code. However, the SROs do not state whether they have filed for business league status and, if so, whether or not the application has been approved. This leaves us wondering what will happen if the application is not approved? Does the Company become taxable rather than tax exempt? And if so, would the overall costs and related allocation amounts be increased? The SRO Proposals should include a contingency plan or at a minimum state that the CAT fees are not dependent on the IRS approval of their Section 501(c)(6) status.

For all of the aforementioned reasons, FIA PTG joins SIFMA in respectfully urging the Commission to suspend the Proposals pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 (“the Act”). FIA PTG also encourages the Commission to take this opportunity to fundamentally reevaluate the costs and benefits of the CAT project itself. Finally, we suggest that at a minimum the Commission require the SROs to resubmit their filings using the regular proposal mechanism in Section 19(b)(1) of the Act so the Commission can make an affirmative determination to approve or disapprove. If you have any questions about these comments, or if we can provide further information, please do not hesitate to contact Joanna Mallers (jmallers@fia.org).

Brent J. Fields, U.S. Securities and Exchange Commission

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Respectfully,

FIA Principal Traders Group

A handwritten signature in blue ink that reads "Joanna Mallers". The signature is written in a cursive style and is placed on a light yellow rectangular background.

Joanna Mallers

Secretary

cc: Walter J. Clayton, Chairman
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner