Written Statement of
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SEC Equity Market Structure Advisory Committee
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Chair White, Commissioners, Director Luparello, and members of the SEC's Equity Market Structure Advisory Committee, thank you for the opportunity to speak with you today on the topic of SEC Rule 611, the Order Protection Rule. My name is Bill Baxter and I am Head of Global Program Trading and Market Structure at Fidelity Management & Research Company. In this role, I am primarily responsible for constructing our approach to equity market access on behalf of the Fidelity mutual funds.

Fidelity Management & Research Company and its affiliated companies are more commonly known as Fidelity Investments. Founded in 1946, Fidelity Investments is a leading provider of investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and many other financial products and services to more than 24 million individuals and institutions, as well as through 10,000 financial intermediary firms.

Fidelity believes that the U.S. equities markets are fundamentally strong and that in recent years both retail and institutional investors have benefited from numerous advances. Technology and a competitive marketplace of multiple trading centers have led to improved cost, liquidity, speed, and product innovation. Since May 2010, the SEC has undertaken a series of initiatives designed to strengthen the equities markets including, but not limited to, the Limit Up-

Limit Down mechanism to address extraordinary market volatility[1], rules regarding Clearly Erroneous Transactions[2], the Market Access Rule[3], and Regulation SCI[4]. We support these reforms. We look to the Commission to help promote market stability and integrity, which in turn can help bolster investor confidence.[5]

The Need for Market Quality Metrics

We appreciate the SEC's current focus on the Order Protection Rule. The U.S. equities markets have changed significantly since the Rule was first adopted close to ten years ago[6] and a retrospective review can help determine if the regulatory structure established by the rule is still appropriate for today.

In conjunction with this review we would like to see the development of agreed upon standard measurements that can be used to evaluate market quality characteristics. Agreement on the right metrics to view market quality can facilitate a data driven approach to building a better market, and can mitigate efforts by market participants that seek to protect existing business models, trading behavior, and execution strategies. Prior to releasing any

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[1]Joint Industry Plans; Order Approving, on a Pilot Basis, the National Market System Plan to Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., Securities and Exchange Commission Release No. 34-67091, May 31, 2012.
[2]Self-Regulatory Organizations; BATS Exchange, Inc.; BATS-Y Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; NASDAQ OMX PHLX LLC; Order Granting Approval of Proposed Rule Changes Relating to Clearly Erroneous Executions Securities and Exchange Commission Release No. 34-72434, June 19, 2014.
[3]Risk Management Controls for Brokers or Dealers with Market Access, Securities and Exchange Commission Release No. 34-63241, November 3, 2010.
[4]Regulation Systems Compliance and Integrity, Securities and Exchange Commission Release No. 34-73639, November 19, 2014.
[5]We also support the Commission's focus on increased transparency in the market through more standardized reporting for investors especially in the areas of broker order routing, ATS operational disclosure, and exchange order types.
[6]Regulation NMS, Securities and Exchange Commission Release No. 34-51808, June 9, 2005.

recommendations to the Commission on equity market structure issues, we ask that the Committee first advise the Commission on which specific measurements to use to evaluate market quality characteristics.

Rule 611 Cannot Be Reviewed in Isolation

Rule 611, along with other regulatory changes, has fostered competition and forced automation across all market venues. It has also significantly reduced trade-throughs and provided a minimum standard for best execution on the routing of marketable orders. From an institutional asset manager perspective, we have been able to operate within the structure of the Order Protection Rule and exceptions to the Rule promulgated by the SEC. Although the vast majority of non-U.S. equity markets do not have a form of regulated price protection, we believe that a requirement to honor the best quote from a protected venue is a reasonable foundation for the U.S equities markets.

Some have suggested that Rule 611 has contributed to excessive fragmentation across trading venues, thereby increasing market complexity and connectivity costs of market participants.[7] For better or for worse, the Order Protection Rule, along with other factors, has contributed to a complex and fragmented market. Issues associated with market complexity, such as access fees, maker-taker pricing and the growth of displayed and non-displayed trading venues are so interconnected to the Order Protection Rule that any assessment of the Order Protection Rule must also consider how these other aspects of market structure and market quality have changed over the past ten years.

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[7]Memorandum to SEC Market Structure Advisory Committee from SEC Division of Trading and Markets, page 15 (April 30, 2015).

For example, we welcome competition and choice in the marketplace, but question whether the current number of smaller trading venues adds to market complexity and operational risk. The Order Protection Rule effectively requires market participants to do business with all trading venues that display orders, regardless of the venue's market share. The number of trading venues has increased significantly in recent years and new venues are expected to join the market shortly. Market data revenue is shared across trading venues, a factor that many believe helps to subsidize the business operations of smaller venues. To help reduce market complexity involved in monitoring quotes and routing orders, we believe that the definition of a "protected bid or protected offer" in Regulation NMS should be revised such that trading venues without significant aggregate market share receive protected quote status across the venue for only a finite period of time. At the conclusion of this initial period, if the trading venue fails to achieve a specified market share, the trading venue's quotations would cease to be protected quotes.[8] We believe that this approach will maintain competition in the markets, while permitting market forces to determine the success of a particular trading venue.

In addition, as competition has evolved, the trading behavior of market participants and the liquidity characteristics of venues have been heavily influenced by fee structures in both exchanges and ATS. Rule 610 of Regulation NMS, among other items, requires fair and non-discriminatory access to quotations and establishes a limit on access fees to harmonize the pricing of quotations across different trading venues. We are concerned that access fees and liquidity rebates have increased complexity and potential conflicts of interest in the market and don't show the true, inclusive cost of quoted spreads. We recommend that the SEC re-examine

[8]At this point in time we do not have a view as to what specific grace period or percentage of market share a trading venue must have in order to maintain protected quote status. We suggest that the SEC's Equity Market Structure Advisory Committee discuss this topic and make recommendations to the Commission on it.

the need to reduce or cap access fees as part of a broader review of market structure. Similarly, we support measured reforms to maker-taker practices and access fees based on empirical data, and through a well-structured pilot across securities with a wide range of market capitalizations and volumes.

Some have also suggested that Rule 611 has harmed institutional investors that need to trade in large size by forcing them to access small-sized quotations and thereby signaling their trading intentions to short-term proprietary traders.[9] We do not agree. We have the flexibility to trade block size orders either in a high touch environment or electronically in broker-dealer ATSs that specialize in block size trades. Broker routing technology has evolved such that we are able to access and aggregate smaller orders on behalf of block size orders in the marketplace. Moreover, we have found the exceptions permitted under Rule 611 allow us to do our job.

Another critique of the Order Protection Rule is that it has failed to achieve the SEC's stated objective of enhancing the reward for the display of limit orders and that it has indirectly led to more dark trading by constraining the nature of competition on lit venues to factors such as speed, fees and exotic order types, in contrast to factors that may be more appealing to investors such as liquidity and stability.[10] We believe that the Order Protection Rule has significantly reduced trade-throughs and resulted in better execution quality for direct retail investors who benefit from some type of protection for their orders.

[9] Memorandum to SEC Market Structure Advisory Committee from SEC Division of Trading and Markets, page 19 (April 30, 2015).
[10] Memorandum to SEC Market Structure Advisory Committee from SEC Division of Trading and Markets, pages 17 and 20 (April 30, 2015).

At the same time, we acknowledge that many market participants believe that Rule 611 has driven more flow to non-displayed venues. One of the reasons why institutional investors use non-displayed venues (and non-displayed order types on lit venues) is to reduce transaction costs by limiting potential information leakage associated with market impact that can occur when transacting on behalf of block size orders.

For some time, the Commission has expressed an interest in investigating whether the quality of public price discovery may be harmed by non-displayed liquidity. We have yet to see evidence that price formation is deteriorating or data establishing that the quality of public price discovery is harmed by non-displayed liquidity. Moreover, in the absence of actual data that public price formation is deteriorating, we would argue that trading in these venues lowers our costs, provides a valuable service, and actually contributes to price discovery.

Conclusion

In closing, I would like to reiterate that Fidelity believes that the U.S. equities markets are fundamentally strong and well regulated. Our interconnected national market system allows thousands of market participants to interact across eleven stock exchanges and more than forty private trading venues every day. Unfortunately, this same interconnectedness has increased complexity, and made it impossible to know with certainty the impact of a single change to the market as a whole. Any proposed changes to U.S. equity market structure should be reviewed and tested carefully to help avoid unintended consequences that may negatively impact investors. On behalf of Fidelity, I would like to thank you for your focus on these issues and for the opportunity to discuss them with you today.

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