



**Matthew Price**  
Chief Operations Officer  
Fidelity Capital Markets  
National Financial Services LLC

February 2, 2021

*Submitted electronically*

Ms. Vanessa Countryman  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington DC 20549-1090

Re: Joint Industry Plan; Notice of Filing of Amendment to the National Market System  
Plan Governing the Consolidated Audit Trail by the Plan Participants; File No. 4-698

Dear Ms. Countryman,

Fidelity Investments (“Fidelity”)<sup>1</sup> appreciates the opportunity to provide comments on the recently proposed amendment to the national market system plan governing the consolidated audit trail (“CAT”).<sup>2</sup> The Proposal was filed by the Plan Participants to the CAT NMS Plan (“Plan Participants”) and seeks Securities and Exchange Commission (“SEC”) approval to re-insert a limitation of liability clause in CAT Reporter Agreements. Fidelity urges the SEC to disapprove the Proposal on the grounds that it is not consistent with risk mitigation strategies for orderly markets, industry norms and existing exchange rules.

Under SEC and SRO rules, Industry Members, such as broker-dealers, are required to report data to the CAT. The Plan Participants have required Industry Members to sign CAT

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<sup>1</sup> Fidelity and its affiliates are leading providers of mutual fund management and distribution, securities brokerage, and retirement recordkeeping services, among other businesses. Fidelity submits this letter on behalf of National Financial Services LLC (“NFS”), a Fidelity Investments company, a SEC registered broker-dealer clearing firm and FINRA member; Fidelity Brokerage Services LLC (“FBS”), a SEC registered introducing broker-dealer, FINRA member, and affiliate of NFS; and Fidelity Management & Research Company (“FMR”), the investment adviser to the Fidelity family of mutual funds. NFS is a CAT Reporter on behalf of itself and one hundred and forty-six (146) correspondent broker-dealers that clear and custody through NFS, including FBS. NFS is a former member of the CAT Development Advisory Group, which provided suggestions to the Plan Participants in the development of the Proposed CAT NMS Plan. FMR has served as an institutional investor representative to the CAT NMS Plan Advisory Committee and NFS, through Matthew Price, currently serves as a broker-dealer representative to the CAT NMS Plan Advisory Committee.

<sup>2</sup> See Securities Exchange Act Release No. 90826, 86 FR 591 (Jan. 6, 2021) (the “Proposal”). Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association (“SIFMA”) in their comment letter to the SEC on the Proposal. We submit this letter to supplement the SIFMA letter on specific issues. Capitalized terms have the meaning ascribed to them in the Proposal and the CAT NMS Plan.

Reporter Agreements as a prerequisite to submit data to the CAT. Plan Participants included in the original CAT Reporter Agreements a clause limiting their liability in the event of a CAT data breach. In 2020, in response to an application filed by SIFMA pursuant to Sections 19(d) and 19(f) of the Securities Exchange Act of 1934 objecting to this limitation of liability clause, the Plan Participants withdrew the limitation of liability clause, and Industry Members signed a new, second set of CAT Reporter Agreements. The current Proposal puts the same objectionable limitation of liability clause back into what would be the third set of CAT Reporter Agreements.

If the SEC approves the Proposal, Industry Members would sign a third CAT Reporter Agreement to meet their regulatory obligation to report to the CAT. Under these new CAT Reporter Agreements, Industry Members would effectively assume all liability associated with a breach or misuse of data in the CAT System.

Industry Member liability for CAT data breaches is not appropriate because under the CAT NMS Plan, CAT LLC and the Plan Participants control the CAT System and the security measures implemented to protect CAT Data. Without justification, the Proposal shifts all liability to Industry Members when the Plan Participants control the CAT System and are responsible for CAT data security. The Proposal is also an inefficient way to address the risk of breach or misuse of CAT data. If CAT LLC is not responsible for CAT data breaches under its control, then it will not be appropriately incentivized to invest in insurance and other risk mitigation measures. The Proposal is also inconsistent with industry norms and existing exchange rules, which already provide for SRO liability in a variety of circumstances.

The Plan Participants have objected to recently proposed additional security requirements for the CAT and suggest that existing CAT Data security requirements are sufficient.<sup>3</sup> If the Plan Participants believe that existing CAT Data Security requirements are sufficient, then they should remain liable for any CAT Data breaches associated with those security requirements.

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<sup>3</sup> See Release No. 34-89632 (August 21, 2020), 85 FR 65990 (October 16, 2020) and comment letter from Michael Simon, CAT NMS Plan Operating Committee Chair (December 14, 2020) *available at* <https://www.sec.gov/comments/s7-10-20/s71020-8100247-226195.pdf>.

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Fidelity would be pleased to provide further information and participate in any direct outreach efforts the Commission undertakes regarding the CAT.

Sincerely,

*Matthew Price*

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cc: The Honorable Allison Herren Lee, Acting Chair  
The Honorable Hester M. Peirce, Commissioner  
The Honorable Elad L. Roisman, Commissioner  
The Honorable Caroline A. Crenshaw, Commissioner

Christian Sabella, Acting Director, Division of Trading and Markets  
Erika Berg, Special Counsel, Division of Trading and Markets

