



February 26, 2024

Submitted electronically through: <https://www.sec.gov/rules/submitcomments.htm>

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

Re: File No. 4-757: Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data

Dear Ms. Countryman,

Fidelity Investments (“Fidelity”)¹ appreciates the opportunity to provide comments to the Securities and Exchange Commission (“SEC” or “Commission”) regarding a proposed revised single national market system (“NMS”) plan governing the public dissemination of consolidated equity market data for NMS stocks (the “Revised CT Plan” or the “Revised Plan”).² The national securities exchanges and the Financial Industry Regulatory Authority (collectively, the “SROs”) filed the Revised CT Plan with the SEC on October 23, 2023, as required by the Commission’s September 1, 2023 Amended Order.³ If approved by the SEC, the Revised CT Plan would replace the current model that, among other items, governs the public dissemination of consolidated equity market data through three separate NMS Plans and two separate Plan Administrators.

Fidelity is one of the world’s leading providers of financial services, including investment management, retirement planning, portfolio guidance, brokerage, benefits outsourcing and other financial products and services. We administer approximately \$12.6 trillion in assets from nearly 50 million individual investors, 24,000 employer client firms, 16,000 wealth management firms and institutions and 8.5 million clearing and custody accounts. With a diverse client base supported by numerous regulated entities that use consolidated equity market data, Fidelity offers the SEC a unique position from which to provide comments on the Revised CT Plan.

¹ Fidelity submits this letter on behalf of National Financial Services LLC, a Fidelity Investments company and SEC registered broker-dealer that provides trade execution, clearing and settlement services to its affiliated SEC registered introducing retail broker-dealers, Fidelity Brokerage Services LLC and Digital Brokerage Services LLC and to unaffiliated introducing broker-dealers (correspondents), custody clients, and direct institutional customers and on behalf of Fidelity Management & Research Company, the investment adviser to the Fidelity family of mutual funds. Fidelity generally agrees with the views expressed by the Securities Industry and Financial Markets Association (“SIFMA”) and Investment Company Institute (“ICI”) in their comments letters on the Revised CT Plan and submits this letter to supplement SIFMA and ICI views on specific issues.

² Securities Exchange Act Release No. 99403, 89 FR 5002 (Jan. 25, 2024). Capitalized terms have the meanings ascribed to them in the Revised CT Plan.

³ Securities Exchange Act Release No. 98271, 88 FR 61630 (Sept. 7, 2023), the “Amended Order”.

Fidelity has expressed its concerns to the Commission regarding the process by which consolidated equity market data is disseminated to the public.⁴ We have repeatedly highlighted that the SROs' current monopoly on consolidated equity market data results in escalating costs. We have also identified inherent conflicts of interest associated with for-profit exchanges simultaneously offering for sale their proprietary market data while acting as Plan Administrators, as well as conflicts associated with the current Plans' voting structure that concentrates voting power among certain exchange groups. Given that consolidated equity market data is generated from institutional and retail investor trades, this data should be disseminated in a manner that serves the public good and not in a manner that accrues economic benefit to SROs.

The Revised CT Plan represents an important milestone in a multi-step, multi-year effort to implement a new, competitive environment for consolidated equity market data. It also comes with a heavy sense of *déjà vu*. In 2020, Fidelity commented on the Commission's proposed order to the SROs to develop a CT Plan, as well as the SROs subsequently proposed CT Plan ("2020 CT Plan").⁵ The SEC's approval of the 2020 CT Plan was subject to multi-year exchange-led litigation and, post-judicial review, a fourteen-month delay in SEC issuance of the Amended Order.⁶ Consolidated equity market data is a critical component of the national market system through which equity investments are priced and traded. We are disappointed by the repeated delays and urge the SEC to approve the Revised CT Plan, and the SROs to implement it, as soon as possible.

⁴ See SEC Roundtable on Market Data and Market Access; File No. 4-729, Fidelity comments available at: <https://www.sec.gov/comments/4-729/4729-4566044-176136.pdf>; Securities and Exchange Commission, Proposed Rule, Transaction Fee Pilot, 83 FR 13008 (Mar. 26, 2018) Fidelity comments available at: <https://www.sec.gov/comments/s7-05-18/s70518-3712431-162396.pdf>; Securities and Exchange Commission Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments, 84 FR 54794 (Oct. 11, 2019) Fidelity comments available at: <https://www.sec.gov/comments/s7-15-19/s71519-6526198-200427.pdf>; Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, 85 FR 2202 (Jan. 14, 2020) Fidelity comments available at: <https://www.sec.gov/comments/4-757/4757-6891496-210884.pdf>; Securities and Exchange Commission, Proposed Rule, Market Data Infrastructure 85 FR 16726 (Mar. 24, 2020) Fidelity comments available at: [s70320-7235188-217092.pdf](https://www.sec.gov/comments/s70320-7235188-217092.pdf) ([sec.gov](https://www.sec.gov)); Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Market Data 85 FR 64565 (Oct. 13, 2020) Fidelity comments available at: [4757-8011737-225393.pdf](https://www.sec.gov/comments/4757-8011737-225393.pdf) ([sec.gov](https://www.sec.gov)); Securities and Exchange Commission, Proposed Rules, Disclosure of Order Information 87 FR 80266 (Dec. 29, 2022), Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders 88 FR 128 (Jan. 3, 2023) ("Minimum Pricing Increments Proposal") and Order Competition Rule 88 FR 128 (Jan. 3, 2023) Fidelity comments available at: [s73122-20163078-333043.pdf](https://www.sec.gov/comments/s73122-20163078-333043.pdf) ([sec.gov](https://www.sec.gov)).

⁵ See footnote 4 *infra*.

⁶ Upon SEC approval of the 2020 CT Plan, Nasdaq, NYSE and Cboe petitioned the D.C. Circuit for review of the SEC's Orders to develop the Plan. The D.C. Circuit ruled in favor of the SEC in two of three areas, striking down the portion of the SEC's CT Plan Order that provided voting rights to non-SROs on the CT Plan Operating Committee. The court also found that it could not sever portions of the CT Plan that the court validated from the portions that it invalidated and subsequently vacated the CT Plan Order in its entirety but upheld the remainder of the SEC's original Order that directed the SROs to create a CT Plan. See *The Nasdaq Stock Market LLC, et al v. SEC*, No. 21-1167 (D.C. Cir. July 5, 2022). On September 1, 2023, the SEC issued the Amended Order directing SROs to file, within 45 days of the publication of the order in the Federal Register, a Revised New Consolidated Equity Market Data Plan. The SROs subsequently proposed Revised CT Plan is the subject of this comment letter.

Executive Summary

In connection with the Revised CT Plan, Fidelity recommends the SEC take the following actions:

- Approve the Revised CT Plan and maintain strong oversight of CT Plan implementation;
- Ensure that CT Plan fee filings are fair and reasonable;
- Require the SROs to act on the SEC’s Market Data Infrastructure rules fee amendment to promote the development of a competitive model for consolidated equity market data; and
- Not require that the Revised CT Plan include alternative Plan Processor selection procedures, as the role of a Plan Processor should be time limited.

Each of these items is discussed in further detail below.

The SEC Should Approve the Revised CT Plan

Fidelity recommends the SEC approve the Revised CT Plan. The Revised CT Plan will address certain conflicts of interest inherent in the current NMS Plans governing consolidated equity market data and will create efficiencies through the consolidation of multiple NMS Plans and Plan Administrators into a single NMS Plan and single Plan Administrator. Moreover, the Revised CT Plan’s requirement that the Person selected as the Administrator “will not be owned or controlled by a corporate entity that, either directly or via another subsidiary, offers for sale its own proprietary market data product for NMS stocks” should serve to mitigate certain conflicts of interest that exist with the current Plan Administrators that also offer for sale their own proprietary market data products. We also agree, as sustained by the D.C. Circuit’s opinion⁷, that voting power on the Operating Committee should be limited to one vote per exchange group, with the ability to obtain a second vote if the exchange group maintains a consolidated market share of at least fifteen percent for at least four of the six calendar months preceding a vote of the Operating Committee.

The SEC Should Maintain Strong Oversight of CT Plan Implementation

In Exhibit F, the SROs set forth steps necessary to implement the Revised Plan and associated timelines for completing these steps. The SROs propose that the timeline begin when the Revised Plan is approved by the Commission and such approval is published on the Commission’s website. The SROs have organized steps to implement the Revised Plan into multiple workstreams, some of which they propose will be performed in parallel, and others with dependencies that need to be completed before they can begin. The SROs’ proposed workstreams associated with the implementation of the Revised Plan are: (1) Setting up the

⁷ See footnote 6 infra.

Plan’s governance; (2) Developing Plan fees, policies, and data subscriber agreements; (3) Selecting the new Administrator; (4) Contract negotiations with the new Administrator; (5) Administrator setup; and (6) Retirement of the CTA Plan, CQ Plan, and UTP Plan. The SROs propose the Revised Plan would become operative after the steps set forth in Exhibit F of the Revised Plan are completed (“Operative Date”).

The SEC should maintain strong oversight of CT Plan implementation. Historically, the SROs have resisted changes to the existing NMS Plans governing consolidated equity market data, and the Revised CT Plan does not include financial penalties if the SROs’ implementation of the Revised Plan does not proceed as anticipated. For these reasons, consistent with Rule 608 of Regulation NMS, strong SEC oversight of the Revised Plan’s implementation is “necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.”

For example, the SROs have proposed a 30-month implementation timeline for the Revised CT Plan from the date of SEC approval to the date the new Plan Administrator would begin operations. Additional time from this 30-month period will likely be needed to complete Workstream 6: “Retirement of current plans - orderly transition” as this workstream is “dependent upon fees being approved, policies finalized and Administrator fully ready to support all functions, including all customers onboarded to new Administrator.” Thus, the Operative Date is likely to occur three years, or later, from the date the SEC approves the Revised Plan.

Given this lengthy implementation timeline, and to help Commission oversight, we support the requirement for the CT Plan Operating Committee to provide written progress reports to the Commission every three months beginning from the formation of the Operating Committee until the Operative Date. Written progress reports should contain the actions undertaken to date by the Operating Committee and a detailed description of the progress made toward completing each of the steps listed in Exhibit F. The current NMS Plans’ public posting of these progress reports on their websites will keep market participants informed of progress on the Revised CT Plan and help provide early identification of areas that may further delay implementation of the Revised Plan.

The SEC Should Ensure CT Plan Fee Filings are Fair and Reasonable

In Exhibit F, Activity 2.1, the SROs propose that the Operating Committee and Advisory Committee will start to determine new fees/policies for the Revised CT Plan four months after the effective date of the Revised Plan, and they will have up to seven months for the Committees to complete this work. In Exhibit F, Activity 2.2, the SROs provide one month to draft fee filings (and any related policies that need to be filed) and submit them to the Commission, and they propose ten months for Commission review and approval. When the SROs file fees for the Revised CT Plan with the Commission, (which, without delays, will likely be close to a year after the SEC approval of the Revised Plan) the SEC should ensure that the Revised Plan’s fee filings are fair and reasonable and address concerns with the current pricing model. The SEC must pay special attention given that market data pricing is set by the SROs that have a vested

interest to maintain high data costs and to increase these costs, particularly each time the SEC adds a new data element to consolidated equity market data.⁸

We recommend the SEC encourage the CT Plan to evaluate new and/or alternative fee models for consolidated equity market data. For example, today data costs are charged to retail customers on a per investor basis (based on whether they are acting in a non-professional or professional capacity) and to broker-dealers via a myriad of additional fees (*e.g.*, display fees, non-display fees, access fees, etc.) for use of this exact same data. This complex and often opaque pricing model is completely inconsistent with the cost to the SROs to produce the data (which does not scale on a per investor basis) and is highly biased towards the retail investor.

The SEC should also encourage the Revised CT Plan to consider whether current policies, such as those surrounding non-display use reporting and professional versus non-professional designations, are necessary or merely add unnecessary complexity and confusion. An added benefit of transparent, simple, fee schedules and policies governing consolidated equity market data is that they will also likely reduce the scope of services that the Plan Administrator would need to provide to the Revised CT Plan, thereby reducing Plan costs.

The SEC Should Require the SROs to Act on the Market Data Infrastructure Fee Amendment

The SEC made two important improvements to the current model for disseminating consolidated equity market data in its Market Data Infrastructure (“MDI”)⁹ rules: (1) the SEC added more detailed trading information to consolidated market data, making it more useful to market participants and (2) the SEC introduced a competitive decentralized consolidation model. Under this new, SEC-adopted model, Competing Consolidators and Self-Aggregators would replace the current, exclusive NMS Plan Processors that collect, consolidate, and disseminate equity market data. Although the exclusive NMS Plan Processors would no longer disseminate all consolidated information for an individual NMS stock, the SEC anticipated that the NMS Plan(s) for equity market data would continue to play an important role in that they would: (1) develop and propose fees for the data content underlying consolidated market data; (2) collect and allocate revenues collected for this data; (3) develop the monthly performance metrics for Competing Consolidators; and (4) provide an annual assessment of the Competing Consolidator model.

The Revised CT Plan does not address the SROs current monopoly on consolidated equity market data because the SEC addressed this issue outside of the Amended Order, in its MDI rules. While the MDI rules are SEC-approved and have withstood exchange-led litigation¹⁰, development of a competitive, decentralized model for consolidated market data is halted

⁸ In December 2022, the SEC proposed several new data elements to consolidated equity market data without disclosing how much the SROs will ultimately charge retail investors and broker-dealers for such data. We have expressed our concerns with this regulatory approach in our comment letter on the SEC’s Minimum Pricing Increments Proposal. *See* footnote 4 *infra*.

⁹ Securities Exchange Act Release No. 90610, 86 FR 18596 (Apr. 9, 2021).

¹⁰ *The Nasdaq Stock Market LLC, et al v. SEC*, No. 21-1100 (D.C. Cir. May 24, 2022).

because the SROs have not taken the requisite step of filing/re-filing with the SEC a proposed fee amendment for core market data (“MDI fee amendment”). Under the MDI rules, SEC approval of the MDI fee amendment launches a multi-year implementation timeline for the development of Competing Consolidators and Self-Aggregators.¹¹ Without the requisite filing, and subsequent SEC approval, of the MDI fee amendment, a competitive environment for consolidated market data cannot begin.

In 2022, certain exchanges proposed an MDI fee amendment that would have set fees for consolidated market data at such high rates that the SEC disapproved the amendment. The SROs have not yet filed a revised MDI fee amendment for Commission review and approval.¹² The SROs lack of action on this topic perpetuates the SROs current monopoly on consolidated equity market data. The SEC should require the SROs to file a revised MDI fee amendment, given its importance to the development of a competitive decentralized consolidation model for consolidated equity market data.¹³

The Revised CT Plan Does Not Need Processor Selection Procedures Because the Role of a Plan Processor Should be Time Limited

In Section 5.3 of the Revised CT Plan, the SROs provide that the Operating Committee does not need to establish Processor Selection Procedures if the Operating Committee initially selects the current NMS Plan Processors for the same services provided under the current NMS Plans governing consolidated equity market data. The SEC’s focus of the Amended Order is on the selection of a new Plan Administrator, rather than new Plan Processors, and we agree it is reasonable for the Operating Committee to have the option of continuing with the current Plans’ Processors. It is also our expectation that the SEC and the SROs will promptly take the requisite steps necessary to transition to a competitive decentralized consolidation model for consolidated market data such that the role of a CT Plan Processor is time-limited, mitigating the need to create new procedures for Plan Processor selection.

* * * * *

¹¹ Under the MDI rules, the initial Competing Consolidator registration period will start 90-days from SEC approval of an NMS Plan amendment that would include fees for consolidated market data.

¹² Securities Exchange Act Release No. 95849, 87 FR 58592 (Sept. 27, 2022). Fidelity estimated that the exchanges’ 2022 proposed MDI fee amendment would have more than doubled Fidelity’s depth of book costs over its current depth of book spend.

¹³ In the SEC’s Minimum Pricing Increments Proposal, the SEC sought to accelerate the implementation of the round lot and odd-lot information definitions in the MDI rules and to amend the odd-lot information definition adopted under the MDI rules to require the identification of the best odd-lot order. If the SEC advances the Minimum Pricing Increments Proposal, the SEC might also address the MDI fee amendment in the adopting release to the Minimum Pricing Increments Proposal.

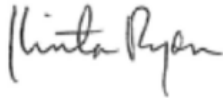
Secretary, Securities and Exchange Commission

February 26, 2024

Page 7 of 7

Fidelity would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,



Krista Ryan
SVP, Deputy General Counsel
Fidelity Investments



Holly Grotnik
Head of Consolidated Data Services
Fidelity Investments

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner

Haoxiang Zhu, Director, Division of Trading and Markets

